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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 CHEVRON CORPORATION,

4 Plaintiff,

5 v.

11 Cv. 0691 (LAK)

6 STEVEN R. DONZIGER, et al.,

7 Defendants.

8 -----x

October 21, 2013
9:30 a.m.

10 Before:

11 HON. LEWIS A. KAPLAN

District Judge

12 APPEARANCES

13 GIBSON, DUNN & CRUTCHER LLP
14 Attorneys for Plaintiff

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25

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(Pages 535-541 sealed by order of the Court)

(In open court)

THE COURT: Good morning, everyone.

Mr. Friedman, you said you wanted to raise something before we began this morning?

MR. FRIEDMAN: Yes, your Honor. Thank you.

We could use some guidance from the Court on this film clip issue. Let me tell you my proposal if I could.

I am prepared to show the Court, if you want to see more of these, but this is an issue that runs throughout many of the, I will call them clips that Chevron has proposed. I think there are roughly 80 of them.

My proposal is to simply have Chevron withdraw what they submitted to the Court, the transcripts and the videos, and substitute in the full take, and then the Court will have the full take, and we don't have to argue about whether things are misleading and so on.

So that's my proposal. I can argue more if we need to.

THE COURT: It's not necessary.

Mr. Mastro.

MR. MASTRO: Your Honor, I am going to hand up our response on this issue. Your Honor asked us to please brief it.

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1 Let me just briefly explain for the record that in
2 virtually every instance in this record, approximately half the
3 clips, they have not counterdesignated anything, and the
4 remainder, approximately 50 out of the 93, they are
5 counterdesignating fuller portions of a clip that we already
6 submitted to the Court previously in connection with different
7 motion practice in the case.

8 So there is nothing that we have taken out of context
9 or kept from the Court ever. In preparing for this trial,
10 which at the time of preparing was potentially a jury trial, we
11 thought it was unfair, for example, in a handful of these clips
12 to include content that would be incredibly misleading, and
13 unfair to a jury and inadmissible, like in the one example he
14 cited to you --

15 THE COURT: I am very familiar with that.

16 MR. MASTRO: We explain all this in this letter. We
17 are not going to have an objection in the overwhelming majority
18 to including the full clips. We will have in a handful of
19 instances specific objections, like Mr. Donziger saying on its
20 dirty clip, something that he has had to admit at his
21 deposition he has no evidence to support.

22 So there will be a handful of those instances. But in
23 the vast majority of cases, we have no problem with our shorter
24 clip. We have redactions of only seven clips total out of 93.

25 THE COURT: I don't understand that number. What are

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1 you talking about?

2 MR. MASTRO: There are 93 clips in all, and he
3 complained about redactions within a clip. There are only
4 seven out of the 93 that had any redactions at all. The rest
5 were continuous clips.

6 THE COURT: Is that right?

7 MR. FRIEDMAN: There are both ones where things are
8 taken out of the middle. There are also ones where something
9 right before or right after is cut out, which we believe also
10 changes the meaning.

11 MR. MASTRO: They are allowed to cross-designate.

12 THE COURT: Yes, of course.

13 MR. FRIEDMAN: That's what I am looking for guidance
14 on, your Honor. If you prefer that we simply submit -- we can
15 do them as defense exhibits.

16 THE COURT: Try to make everyone's life a little bit
17 easier. I understand that Mr. Berlinger and his guys went to
18 Ecuador, and they shot a lot of video, and they did it not in a
19 continuous run of 600 hours or whatever it was. They had many,
20 many individual turn on the camera, have a take, stop the
21 camera.

22 I take it from what has been said that we have 93
23 excerpts from all of that video that Chevron has identified,
24 and 86 of them are entirely continuous, unedited, uninterrupted
25 takes or portions of takes?

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1 MR. MASTRO: Correct, your Honor.

2 THE COURT: And in the cases in which there are
3 portions of takes there may have been some video shot before
4 the piece that Chevron has put forward as an exhibit, or after,
5 or both, but the integrity of the piece they have put on the
6 witness list in 86 of those cases is not questioned. Is that
7 right, Mr. Friedman?

8 MR. FRIEDMAN: Well, I think it depends what you
9 mean -- I just want to make sure I am understanding. If we
10 have a particular take, camera on, camera off, Chevron may have
11 presented something in the middle, a shorter period, where from
12 our perspective the sentence right before or the sentence right
13 after is taken out that changes the meaning. But the integrity
14 of the clip is I think -- I don't know if the number is 86 or
15 84.

16 THE COURT: It's about that.

17 MR. FRIEDMAN: Right.

18 THE COURT: So in principle, this is no different as
19 to that than somebody offering pages 6 through 12 of a 100 page
20 deposition, right? There is pages 1 through 5 that come
21 before. There's pages 13 through 100 that come afterward.

22 Please be seated, Mr. Donziger. One lawyer at a time.

23 And when a party offers in evidence pages 6 to 12 of a
24 deposition, or whatever I said, the other side has the
25 opportunity to cross-designate other portions that they think

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1 in fairness should be considered together with it. It's
2 exactly the same as that, correct?

3 MR. FRIEDMAN: I think it's not exactly the same, your
4 Honor, because some of these are stopped in the middle of an
5 answer.

6 THE COURT: It's exactly the same. Somebody offers
7 page 6 to page 10, line 2. And assume line 2 is in the middle
8 of an answer.

9 MR. DONZIGER: Can I be heard?

10 THE COURT: No, not right now. I am talking to Mr.
11 Friedman.

12 It's exactly the same as that. The party against whom
13 the testimony is offered is at liberty to designate page 10,
14 line 3 and following, and to say, in fairness, it ought to be
15 considered together. It's exactly like that, isn't it?

16 MR. FRIEDMAN: I think it's a little different.

17 THE COURT: How is it a little different?

18 MR. FRIEDMAN: I don't think the Court would allow a
19 party to read just part of an answer out of a deposition.

20 THE COURT: Possibly so. If it were being read out in
21 open court, the court would look at the transcript and it would
22 make a ruling on the spot, right?

23 MR. FRIEDMAN: Yes.

24 THE COURT: And if it were being done in a way that is
25 commonly done in bench trials all over the United States, the

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1 party offering the deposition is not reading it in court,
2 because there is no point in reading depositions into the
3 record in open court, where the judge can do it in his chambers
4 in another context without a room full of lawyers, and there is
5 a designation up to page 10, line 2 to stay with my example,
6 and the party against whom it is offered says, judge, it cuts
7 off in the middle of the answer and you ought to consider the
8 rest of it. That submission is made in writing in some way and
9 the judge rules on it in good time. It's exactly like that,
10 true?

11 MR. FRIEDMAN: I think it's true enough. I know where
12 you're going, which is Rule 106, the rule of completeness. We
13 are entitled to the rest of the thing that should be viewed in
14 fairness.

15 THE COURT: Yes.

16 MR. FRIEDMAN: At this point, what I am asking you is
17 a housekeeping issue of, I think what would be simpler is for
18 us to either designate the tapes we want you to view in their
19 entirety.

20 THE COURT: I am going to get to the way I think we
21 should handle that.

22 For those 86, or whatever the precise number is, you
23 and Mr. Mastro, or whomever you designate, are going to work
24 together. And you have not been involved in the nastiness that
25 has characterized the relations between the lawyers in this

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1 case up until your appearance, and I hope maybe it's ending,
2 but I am not all that hopeful, but I don't blame you. I want
3 one film clip with respect to those particular items, we will
4 call it the 86. I know the number might be slightly different.

5 Now, Mr. Mastro is telling me that there are seven in
6 which something was edited out of the film clip that he has
7 presented. And the example that I was handed last week related
8 to, I think it was Plaintiff's Exhibit 4A, is that correct?

9 MR. MASTRO: Yes, your Honor.

10 THE COURT: About 15 words were edited out, both of
11 the film clip and of the transcript right midstream. There is
12 a sentence of Mr. Donziger on camera. It cuts partway through
13 the sentence. The rest of that sentence and part of the next
14 sentence doesn't appear on the exhibit or on the transcript of
15 the exhibit, and then it picks up.

16 Just wait, Mr. Mastro.

17 Then if you look at the video, as I have done, and
18 you're paying very close attention, you see a little
19 discontinuity in the movement of Mr. Donziger's head. So if
20 you're really paying attention, you realize it's been edited at
21 that point.

22 Now, the fact is that at least that particular clip
23 was submitted to the Court on the preliminary injunction motion
24 or earlier, a long time ago. It was a focus of Chevron's
25 presentation then. The minute I saw what you handed up, Mr.

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1 Friedman, I knew, because I remembered the clip, that some
2 words had come out. Given the fact that Mr. Donziger is well
3 represented, and given the fact that this was already fully on
4 the record in this case, I assumed that there was no attempt to
5 mislead, but I want those things fixed.

6 MR. MASTRO: Certainly, your Honor. If I may just
7 very briefly.

8 We will definitely fix whatever needs to be fixed.
9 But, your Honor, our exhibit list did disclose very clearly
10 that it was two segments put together, showed the time
11 sequences and the words, where it ended and began, number one.

12 Number two, the other six examples here, three of them
13 they have not objected to at all. The other three we have no
14 objection to putting the language back. Only on PX 4, where
15 they accused Texaco, Donziger's self-serving hearsay saying,
16 Texaco paid the judge, and then admitted at his deposition he
17 hadn't paid the judge, he had no evidence of it, those are the
18 only words we cut.

19 THE COURT: It's not going to hurt to put them back.
20 I am not accepting it for the truth of what Mr. Donziger has
21 said, and you have pointed out to me more than once that Mr.
22 Donziger testified under oath that he has absolutely no
23 personal knowledge or evidence to support the allegation made
24 by him in that tape, or at least that's my memory.

25 MR. MASTRO: We have always put in the full video.

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1 THE COURT: Enough already.

2 MR. MASTRO: We are done.

3 THE COURT: Anything else?

4 MR. MASTRO: We will work it out with Mr. Friedman.

5 MR. FRIEDMAN: The remaining housekeeping point is
6 let's take, I don't know, take one of these one where it's cut
7 off at the beginning or the end. The question is just a
8 housekeeping one of, should we just submit a fuller version of
9 what we think is our defense exhibit?

10 THE COURT: You and Mr. Mastro together should submit
11 one. I do not want to have one set of film clips that go from
12 A to B, another one that goes from B to C, and a third one that
13 goes from C to D. That's nuts.

14 MR. MASTRO: We will work this out. If we had met and
15 conferred, this never would have needed to come before you.

16 THE COURT: Now, the sniping that is going on here is
17 totally out of control, and if I get another letter from you,
18 Mr. Mastro, giving a minute-by-minute account of the e-mails
19 back and forth between you and Mr. Friedman, such as was filed
20 last night, it's not going to be good.

21 MR. MASTRO: Your Honor, I apologize. I intended no
22 offense. Your Honor gave a directive to meet and confer.

23 THE COURT: Yes, I did. But if you people could get
24 along like reasonable lawyers, which I expect and demand of
25 you, we wouldn't have nearly the quantity of problems that we

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1 have here. There is no reason why these things can't be
2 resolved in a sensible way, with reasonable understanding and
3 civility each towards the other, and I am tired of it. And
4 believe me, I do not exclude anybody from what I have just
5 said.

6 Now, what was on your mind, Mr. Donziger?

7 MR. DONZIGER: Thank you, your Honor. I just have
8 three issues. And to the extent this is not what you want to
9 hear, I can put it in writing.

10 First of all, on the outtakes. I believe a lot of
11 those outtakes were presented in a way that was deliberately
12 misleading as to my state of mind, and I want the opportunity,
13 with my counsel, to make sure the Court sees the clips, how
14 they edited them and the things they took out, and I want an
15 opportunity to be heard on that.

16 There is also a bigger issue because you talked about
17 the integrity of the 86 or 93 clips. In the 600 hours of
18 outtakes, we have never had an opportunity to review because of
19 the lack of resources.

20 THE COURT: I have heard the last I am going to hear
21 from you about lack of resources. Cut it off right here. If
22 you want to put in affidavits fully accounting for every dollar
23 in this case and in Ecuador on personal knowledge, if you want
24 to get the accountant who produced the accounting for you in
25 here to testify about it, I am all ears. But you have been

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1 going on about this lack of resources from time in memoriam
2 ever since John Keker got out of this case, and I have said to
3 you over and over and over again, produce the evidence. And
4 you just continue to repeat it and there has never been a
5 single shred of evidence.

6 You made motions in this court in the last month going
7 on about this, and I now know that at least two weeks before
8 this trial, contrary, I believe, although the record needs to
9 be checked, and I acknowledge that, saying you were all by
10 yourself, when Mr. Friedman and Ms. Littlepage were in this
11 case on your behalf. I have heard enough of it. You want to
12 put up, put up sworn evidence, otherwise I am not listening to
13 it.

14 What else do you have to say?

15 MR. DONZIGER: Mr. Keker's motion, Mr. Smyser's motion
16 all outline a lack of resources.

17 THE COURT: Mr. Keker has as much personal knowledge
18 of that as the Archbishop of Brooklyn.

19 MR. DONZIGER: I have also submitted an affidavit that
20 I am insolvent due to debts that I owe.

21 THE COURT: Mr. Donziger, did you collect the \$2
22 million or a million nine that you were left last year by your
23 grandparents and that a Florida court ordered be paid to you?

24 MR. DONZIGER: Sir, do you have any knowledge of all
25 the debts I have?

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1 THE COURT: Mr. Donziger, answer my question.

2 MR. DONZIGER: That's inappropriate. I am not
3 answering your question. Can I please finish my points?

4 What I wanted to say, aside from the resource issue,
5 there are 600 hours of outtakes that in their totality
6 completely contradict the misleading impression these Gibson
7 Dunn lawyers left with you. So I want to be able to present
8 some or most of that evidence to the Court.

9 THE COURT: Mr. Donziger, you have an exhibit list.
10 You have a witness list. You have very talented outside
11 counsel. You're a very bright lawyer yourself. I acknowledge
12 that. You know how evidence is put in. We are not simply
13 having unsworn speeches here for the benefit of whoever you
14 think it is benefiting.

15 You have another question?

16 MR. DONZIGER: I have two other quick issues.

17 With regard to the Doe issue, I recognize the Court's
18 ruling. I would simply ask the Court, in light of what has
19 transpired since I was last here on Thursday, to please take
20 another look at the situation and see if there is --

21 THE COURT: Mr. Donziger, that was discussed in the
22 robing a short time ago. It's not going to be discussed
23 further in open court. So far as we know, no Doe witnesses are
24 being called. They may. They may not. I will deal with
25 whatever has to be dealt with in the ordinary course without

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1 the benefit of these kind of statements on your behalf.

2 What is your next issue?

3 MR. DONZIGER: The third issue is my testimony. I am
4 in a position, where to deal with all the allegations against
5 me by all of the Chevron witnesses, it is taking me an enormous
6 amount of time to prepare a declaration. I mentioned this last
7 week when we were in the robing room. I wanted to ask the
8 Court's permission to testify on direct live and redirected by
9 my counsel.

10 THE COURT: So your position now is, having seen in
11 writing in advance the testimony of all the witnesses on the
12 other side, you would like to be treated differently from
13 everybody else?

14 MR. DONZIGER: No. I think there are two or maybe
15 three other witnesses that are going to be testifying live on
16 direct. I am not the only one. However, given my role in this
17 case as being the main defendant, my right to a public trial, I
18 would like to be able to testify openly. It doesn't mean I
19 won't or can't put in some sort of declaration in advance
20 consistent with the Court's local rules so they can see it, but
21 I want to be able to be directed by Mr. Friedman or Ms.
22 Littlepage live if the Court would consider it.

23 THE COURT: I will consider it, but I am offering no
24 guarantees.

25 MR. DONZIGER: Thank you.

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1 THE COURT: All right. Let's proceed.

2 MS. NEUMAN: Good morning. Chevron calls Spencer
3 Lynch to the stand.

4 MR. GOMEZ: By consent, we neglected to move into
5 evidence Defendants' Exhibit 1307 and Defendants' Exhibit 478
6 during the Bogart testimony. I have conferred with plaintiff's
7 counsel, and they have no objection to moving those documents
8 in.

9 THE COURT: All right. They are received.

10 (Defendants' Exhibit 478 and 1307 received in
11 evidence)

12 SPENCER CHARLES LYNCH,

13 called as a witness by the plaintiff,

14 having been duly sworn, testified as follows:

15 THE DEPUTY CLERK: State your name and spell your last
16 name for the record.

17 THE WITNESS: Spencer Charles Lynch, L-Y-N-C-H.

18 THE COURT: Proceed, please.

19 MS. NEUMAN: Thank you, your Honor.

20 May I approach the witness?

21 THE COURT: Yes.

22 DIRECT EXAMINATION

23 BY MS. NEUMAN:

24 Q. Good morning, Mr. Lynch.

25 A. Good morning.

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Lynch - direct

1 Q. Do you have Exhibit 4100 in front of you?

2 A. I do.

3 Q. Is that a copy of the direct testimony that you are giving
4 in this matter?

5 A. It is, yes.

6 Q. Do your initials appear on each page of Exhibit 4100?

7 A. They appear on the first page.

8 Q. Is that your signature at the end of the document?

9 A. It is, yes.

10 Q. Are all the statements in Exhibit 4100 true and accurate?

11 A. Yes.

12 MS. NEUMAN: We would move the admission of Exhibit
13 4100.

14 THE COURT: Received on the same basis as the others.
15 (Plaintiff's Exhibit 4100 received in evidence)

16 Q. Mr. Lynch, are you a digital forensic examiner with Stroz
17 Friedberg?

18 A. Yes, I am.

19 Q. In paragraph 30 of your direct testimony, you offer the
20 opinion that in the verification process you performed an
21 analysis to determine if there were any indications that the
22 evidence on the Guerra computer had been tampered with,
23 manipulated, or otherwise fabricated, and found no such
24 indications. Do you recall that?

25 A. I do, yes.

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Lynch - direct

1 Q. Do you have any demonstratives regarding that opinion, sir?

2 A. Yes.

3 MS. NEUMAN: Can we have on the screen Exhibit 4103
4 please?

5 Q. Is this one of the demonstratives that you prepared in your
6 opinion of Mr. Guerra's computer?

7 A. It is, yes.

8 Q. Could you explain this demonstrative, please?

9 A. Yes. This is an animated timeline of the evidence of the
10 history of the use of Mr. Guerra's computer.

11 First, in 2007, a series of files were copied to the
12 computer that included 157 MP3 files, 430 Word documents and 70
13 Excel files. Included in those documents were a set of
14 documents that on their face appeared to be judgments or orders
15 with Mr. Guerra's signature block at the bottom from when he
16 was a judge.

17 Next, in 2010, Windows XP was installed on the
18 machine. It's worth noting that there is evidence that there
19 was a previous installation of Windows on the computer, but
20 this reinstallation of Windows overwrote the files associated
21 with that previous installation.

22 Shortly after Windows was installed, an external USB
23 hard drive was connected to the computer. And then minutes
24 after it was connected, a series of files were copied to the
25 computer, that included 3,395 pictures, many of which appeared

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Lynch - direct

1 to be family photos, some included photos of Mr. Guerra.

2 And along with those pictures was a group of documents
3 that was also copied. The documents consisted of 194 Word
4 documents, 78 PowerPoints, and 58 Excel files. And in that set
5 of documents were documents like Mr. Guerra's CV, and then 11
6 of the drafts of orders issued in the Ecuadorian court system
7 against Chevron.

8 After that, the hard drive was removed, and it's not
9 uncommon after someone reinstalls Windows to then copy files
10 onto a computer.

11 The next significant period of activity began in
12 December 2010. And from December 2010, until the computer was
13 imaged in July, 209 Word documents, 8 PowerPoints, 21 PDFs were
14 created on the machine.

15 In the Word documents were 104 of the draft orders
16 that I analyzed, and for some of those documents there was
17 metadata that indicated that they were actually created using
18 some of the 1230 Word documents copied in 2007 as templates.

19 Those documents were saved to the machine, and in
20 addition to the documents having been created or saved to the
21 machine, there were 23 USB devices that were connected to the
22 machine, sometimes multiple times in that time period.

23 Q. Were you able --

24 MS. NEUMAN: Can you put that back up, please?

25 Q. Mr. Lynch, were you able to take possession of any of those

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Lynch - direct

1 23 USB devices?

2 A. I was, yes.

3 Q. Did any of the draft orders that you analyzed --

4 THE COURT: 23 USB devices, where did they come from?

5 THE WITNESS: There was evidence on the computer of 23
6 different USB devices.

7 THE COURT: Ms. Neuman, why are we doing this live as
8 opposed to via the statement?

9 MS. NEUMAN: He just had some demonstratives to make
10 part of his opinion more clear, and he has one exhibit to
11 correct. We can go right to the correction if you prefer, your
12 Honor.

13 THE COURT: You may do the demonstratives.

14 MS. NEUMAN: I couldn't hear you.

15 THE COURT: You may do the demonstratives.

16 MS. NEUMAN: Thank you, your Honor.

17 BY MS. NEUMAN:

18 Q. The eight USB drives that you had, Mr. Lynch, did they
19 contain also copies of any of the draft orders that you found
20 on the Guerra computer that were subsequently issued by Judge
21 Zambrano?

22 A. Yes. The USB devices contained copies of 49 of these
23 orders that I found on the Guerra computer, or drafts of
24 orders.

25 THE COURT: Is that 49 of the 104, is that correct?

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Lynch - direct

1 THE WITNESS: Yes.

2 Q. Were the documents, based on your analysis, copied from the
3 computer to the USB drives or the other way around?

4 A. The files on the USB drive were all created on the USB
5 drive after they had been created or saved on the Guerra
6 computer.

7 Q. Were the dates of the documents that were put on the USB
8 drives prior to the dates that those same documents, the orders
9 to which related for Judge Zambrano were issued?

10 A. Yes.

11 Q. So the sequence is they are on the computer, they go to the
12 USB drive, and after that orders are issued, is that right?

13 A. Yes.

14 Q. Mr. Lynch, did you have an Exhibit 2 to your original
15 report?

16 A. I did, yes.

17 Q. Have you made a correction to that exhibit?

18 A. I have, yes.

19 MS. NEUMAN: May I approach, your Honor?

20 I have handed the witness what has been marked as
21 Plaintiff's Exhibit 4106.

22 Q. Is this the corrected version of the prior Exhibit 2 to
23 your report, Mr. Lynch?

24 A. It is, yes.

25 Q. Could you please explain the correction that's been made on

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Lynch - direct

1 this exhibit?

2 A. Yes. There was a typo in Exhibit 2 that related to files
3 where the same file name appeared twice on the exhibit.

4 If you look about halfway down the page, there are two
5 files that appear with the same name, and in the previous
6 version of the exhibit, there was a typo in that the edit time
7 was the same for both of them. In this corrected version, the
8 second document has been corrected to accurately reflect the
9 metadata for that document, and that affects a set of documents
10 that appear twice throughout the exhibit.

11 Q. On Exhibit 4106, has the metadata now been accurately
12 reflected for each of those documents that appear twice on the
13 exhibit?

14 A. Yes.

15 Q. You were also asked in your recent deposition about print
16 times on Exhibit 4106 that predate the date creation of the
17 related document. Do you recall that?

18 A. I do, yes.

19 Q. Were those print times accurate?

20 A. They were, yes.

21 Q. Can you explain why they predate the date creation times?

22 A. Yes. The documents with print times that predate the
23 creation of the document appear to have -- the metadata is
24 consistent with them having been created using earlier
25 documents as templates. As an example, on the same section

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Lynch - direct

1 that's zoomed in here, the right most date from 2007 predates
2 either the other dates created or the last saved date.

3 I performed a search of the hard drive for other
4 documents with that same print date, and I did this for all of
5 the documents that had print dates that predated the creation
6 of the document, and found that there was a document copied to
7 the computer in 2007 that had that exact print date to the
8 second, and that when it was used as a template, that print
9 date carried forward into the new version. And since the new
10 document has never been printed, that print date remains from
11 the previous document.

12 Q. Is that consistent with your conclusion of the orders
13 having been created on this particular computer?

14 A. Yes. It indicates that they were created on this computer.

15 MS. NEUMAN: I pass the witness, your Honor.

16 THE COURT: Thank you.

17 Cross-examination.

18 MR. BOOTH: Good morning, your Honor. I am Rainey
19 Booth.

20 I have some books, your Honor. May I pass them out?

21 THE COURT: Yes.

22 Mr. Friedman, while he is doing that, let me make
23 clear that my comments to Mr. Donziger before do not in any way
24 restrict the evidence that may be adduced in this courtroom by
25 him. I said I wasn't going to hear any more of his complaints

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Lynch - direct

1 about lack of resources. Of course, if you want to put
2 evidence in about that, you're welcome to do that.

3 MR. FRIEDMAN: I understood your position. Thank you,
4 your Honor, assuming arguendo that it's relevant.

5 MR. BOOTH: May I proceed?

6 THE COURT: You may.

7 CROSS-EXAMINATION

8 BY MR. BOOTH:

9 Q. Good morning, Mr. Lynch. Nice to see you again. We have
10 met before, haven't we?

11 A. Yes.

12 Q. Mr. Lynch, you work at Stroz Friedberg, is that right?

13 A. Stroz Friedberg.

14 Q. Can you tell us a little bit about that firm, please?

15 A. It's a firm that was started over a decade ago to provide
16 digital forensic services, and we now have a number of
17 different service offerings, that include digital forensics,
18 e-discovery, technical consulting, forensic accounting.

19 Q. Stroz Friedberg provides a wide range of services, correct?

20 A. Yes, we do.

21 Q. Including investigative services?

22 A. That's correct.

23 Q. Your particular specialty is what?

24 A. Digital forensics.

25 Q. But within your firm, there are former IRS and FBI agents,

DAL8CHE1

Lynch - cross

1 is that right?

2 A. Yes, there are.

3 Q. There are investigators and computer specialists like
4 yourself, correct?

5 A. Yes.

6 Q. And if you will turn in your book to tab 2, do you
7 recognize the compilation of pages in tab 2, if you just look
8 through it?

9 Do you recognize that as a printed version of the
10 Stroz Friedberg Web site, or at least portions of the Stroz
11 Friedberg Web site?

12 A. It appears to be a portion of our Stroz Friedberg Web site.

13 Q. I will represent to you I have tried to pick out portions
14 that would be the parts of the firm that you worked in, or the
15 types of things that you were doing. I will also represent
16 it's not the full Web site.

17 MR. BOOTH: At this time, I would offer Defendants'
18 Exhibit 1335, which is tab 2 in the book, to save time in going
19 through all the different things his firm does.

20 MS. NEUMAN: We haven't had a chance to review the
21 exhibit yet and it's not the full site.

22 MR. BOOTH: I am happy to put in a copy of the full
23 site if that's an issue.

24 THE COURT: Where is the exhibit? I have got a
25 looseleaf book full of unmarked pages.

DAL8CHE1

Lynch - cross

1 MS. NEUMAN: It's under tab 2.

2 THE COURT: I understand that. Has the exhibit been
3 marked, the exact proposed exhibit?

4 MR. BOOTH: Yes, your Honor. The exhibit I would
5 offer is tab 2, DX 1335.

6 THE COURT: If you have Exhibit DX 1335, please give
7 it to the deputy.

8 I have the book, but we are marking exhibits.

9 MR. BOOTH: It's at the bottom of the page. It should
10 have a Bates number.

11 THE COURT: Now I have got it.

12 MR. BOOTH: I apologize. We had it printed on there.

13 THE COURT: That's all right.

14 MR. BOOTH: I would offer that into evidence, but I am
15 happy to substitute a full copy of the entire Web site. It is
16 just that it goes into other areas that I think would have
17 nothing to do with what he is discussing.

18 THE COURT: Is there any objection to 1335?

19 MS. NEUMAN: Your Honor, I don't object for it not for
20 the truth. It's a hearsay document. There are many sections
21 of the document that don't relate to Mr. Lynch or his testimony
22 in any way.

23 THE COURT: I am going to receive it subject to a
24 motion to strike any parts that you object to after you have
25 had an opportunity to review it fully.

DAL8CHE1

Lynch - cross

(Defendants' Exhibit 1335 received in evidence)

THE COURT: Let's go on.

BY MR. BOOTH:

Q. Mr. Lynch, in the course of performing your work on this case, if there had been issues or areas of your investigation outside of your particular expertise, would you have been allowed to discuss that with other members of your firm?

A. Yes, I would have been.

Q. Did you end up discussing any aspect of this case with any other investigator or member of the Stroz Friedberg team?

A. Yes. I have had people working at my direction on the case.

Q. Is that outlined in your witness statement?

A. I believe it is, yes.

Q. Now, can you tell the Court exactly what you were asked to do in this particular case, your exact assignment?

A. I had many different tasks and, generally, they broke into an analysis of Mr. Guerra's hard drive and the documents contained within it; an analysis of the Cabrera report and a 2009 filing; analysis of the judgment issued in 2011; and then authentication of some other documents.

Q. I want to start with the Donziger hard drive. I believe you indicated that you found on the Donziger hard drive a copy of what was filed as the Richard Cabrera report, is that right?

A. Yes.

DAL8CHE1

Lynch - cross

1 Q. Can you go through with me just a couple of dates.

2 The report signed by Richard Cabrera that was filed
3 with the Ecuadorian court, can you confirm that it was filed
4 with that court April 1, 2008, is that correct?

5 THE COURT: Can't the counsel stipulate to that?

6 MS. NEUMAN: So stipulated, your Honor.

7 THE COURT: Mr. Gomez?

8 MR. GOMEZ: Yes, your Honor.

9 THE COURT: Mr. Booth?

10 MR. BOOTH: Yes, your Honor. Thank you.

11 Q. On Mr. Donziger's hard drive, did you find a draft, what
12 you referred to as a draft of the Richard Cabrera report?

13 A. Yes.

14 Q. Was that draft received by Mr. Donziger's e-mail account on
15 April 1, 2008?

16 A. Yes.

17 Q. Do you know the time that it was received on that date?

18 A. I just want to confirm the exact time.

19 Q. That's fine.

20 A. Actually, I don't recall the exact time.

21 Q. Let me ask it this way. Since we have a filing date of the
22 report with the court in Ecuador, and an e-mail with the draft
23 of the report coming to Mr. Donziger on the same day, can you
24 tell me, from your recollection, which happened first on that
25 day?

DAL8CHE1

Lynch - cross

1 A. I don't have --

2 MS. NEUMAN: Objection. It assumes facts not in
3 evidence. Foundation.

4 THE COURT: Overruled.

5 A. I don't have an opinion as to which happened first.

6 Q. In terms of looking at Mr. Donziger's hard drive, did you
7 find any draft version of the Cabrera report prior to April 1,
8 2008?

9 MS. NEUMAN: Objection. Beyond the scope.

10 THE COURT: Overruled.

11 A. Not on Mr. Donziger's hard drive.

12 Q. Your report indicates, I believe, that the Cabrera draft
13 that you found on Mr. Donziger's hard drive, after being
14 received as an e-mail on April 1, had been downloaded on to the
15 hard drive. My question is, do you know when that was
16 downloaded on to Mr. Donziger's hard drive from the e-mail?

17 A. I do not know when it was downloaded to the hard drive.

18 Q. Can you give us any estimate of whether that was the same
19 day, April 1, 2008, or whether it was some days after April 1,
20 2008 that that document was downloaded on to the hard drive?

21 A. No, I cannot.

22 Q. Now, if you look at page 16, paragraph -- sorry, page 6,
23 paragraph 15 of your witness statement. In that paragraph,
24 you're discussing some of the metadata on the Richard Cabrera
25 report, is that right?

DAL8CHE1

Lynch - cross

1 A. I discuss the metadata on the draft version of it.

2 Q. The draft report?

3 A. Yes.

4 Q. There is a statement on the fourth line down, the statement
5 is "the day before it was filed with the Ecuadorian court,
6 unchanged by Richard Cabrera." Do you see that statement?

7 A. I do, yes.

8 Q. Now, Mr. Lynch, when we talk about metadata, can you
9 explain briefly to the Court what metadata is?

10 A. Yes. It's data about data. In the computer world, it's
11 data about documents or files, or data stored on a computer.
12 It can contain the day that a document was created or a file
13 was created or last saved and the user name of the person who
14 authored it or last saved it, among other things.

15 Q. Is there anything that can be done with the file in terms
16 of saving it that can reset the metadata on a file such as the
17 one you described in paragraph 15 on page 6?

18 A. Yes.

19 Q. What is that?

20 A. For Word documents, metadata can be reset through the
21 save-as option in Word.

22 Q. So here in paragraph 15, when you discuss that the document
23 was created on March 30, 2008, and was worked on until sometime
24 March 31, 2008, that's the document we are talking about in
25 that paragraph, right?

DAL8CHE1

Lynch - cross

1 A. Yes.

2 Q. So if the document received on March 30, 2008 had been
3 saved as to the computer that was working on it on that date,
4 that would have reset the metadata, correct?

5 A. Yes, it could have.

6 Q. And you would have no way of knowing, had that been the
7 case, what had happened prior to March 30, 2008 in terms of
8 metadata, correct?

9 A. That's correct.

10 Q. So here, also, you talk about it being unchanged by Richard
11 Cabrera. Is it fair to say in that paragraph you mean that
12 between March 30 and March 31, it's your opinion that document
13 was unchanged on a computer used by Richard Cabrera, is that a
14 fair statement?

15 A. In that statement, I am stating that when the document was
16 filed, it was unchanged from the version sent to Mr. Donziger's
17 e-mail address.

18 Q. But you had no way of knowing if Mr. Cabrera worked on the
19 computer or assisted in the changes that were made between
20 March 30 and March 31 of that year, do you, sir?

21 A. I have no opinion as to who was at the computer.

22 Q. So then the basis of your opinion that it was unchanged by
23 Richard Cabrera is what?

24 A. That the version that was filed by Mr. Cabrera was an
25 identical match to the document that was sent to Mr. Donziger.

DAL8CHE1

Lynch - cross

1 MR. BOOTH: We would move to strike that portion of
2 the opinion based on the lack of personal knowledge and
3 speculative opinion. And I can file that after the fact if the
4 Court prefers.

5 THE COURT: You can what?

6 MR. BOOTH: I can file that objection after the fact,
7 if the Court prefers, but I thought since we had him here I
8 would go ahead and make that objection to that portion of his
9 report.

10 THE COURT: I will let it stand for what it is worth.
11 I understand the point you're making.

12 I think, Mr. Lynch, it reflects your assumption that
13 Mr. Cabrera was not working on the same computer that the Lago
14 Agrio plaintiffs' lawyer was working on in the last, roughly,
15 48 hours before his report was filed, is that right?

16 THE WITNESS: I think that's correct. Also, I think
17 that there is -- my specific opinion is when it was filed, it
18 hadn't been changed from the version that was sent to Mr.
19 Donziger, that the version Mr. Donziger had that was sent to
20 him with the metadata as reflected in my report was identical
21 to the copy filed.

22 THE COURT: Here in paragraph 15 you say that the
23 metadata shows that Plaintiff's Exhibit 1017, which I take it
24 is the file that you examined on Mr. Donziger's computer, is
25 that right?

DAL8CHE1

Lynch - cross

1 THE WITNESS: Yes, I believe 1017.

2 THE COURT: So you're saying that your opinion is that
3 the file that was on Mr. Donziger's computer was not changed
4 between March 30, 2008 at 9:17 a.m. and the time the document
5 was filed in court on April 1st by Mr. Cabrera, is that what
6 you're saying?

7 THE WITNESS: No, that's not quite what I am saying.

8 I don't know what changes occurred between 9:17 and
9 10:26 on March 31. I am saying that whatever changes may have
10 occurred in that time period, those were the final changes to
11 the document before it was filed. When it was filed, there
12 were no further changes from that version of the document.

13 THE COURT: I see. So your view is that between March
14 31 at 11:09 a.m. and the filing, there were no changes by
15 anybody, is that right?

16 THE WITNESS: Yes.

17 THE COURT: As to earlier, March 30, 9:17 in the
18 morning, till March 31, 11:09 in the morning, there were
19 changes first of all, is that right?

20 THE WITNESS: Yes.

21 THE COURT: And you expressed the view that those
22 changes were not done by Mr. Cabrera, is that right?

23 THE WITNESS: Yes. The metadata for those changes is
24 consistent with the changes being made by a computer used by
25 Mr. Juan Pablo Saenz.

DAL8CHE1

Lynch - cross

1 THE COURT: So when you say it was unchanged by
2 Mr. Richard Cabrera, the conclusion is based to that extent on
3 the assumption that Mr. Cabrera was not using Mr. Saenz'
4 computer or whatever computer Mr. Saenz' was working on?

5 THE WITNESS: I think that's correct. That's fair to
6 say.

7 THE COURT: And not dictating it to him or
8 communicating it to him so that he would do the key strokes to
9 input his changes, is that right?

10 THE WITNESS: That's fair, yeah.

11 THE COURT: That's your assumption?

12 THE WITNESS: Yes. I think so, yes.

13 THE COURT: You have no personal knowledge one way or
14 the other on that precise point?

15 THE WITNESS: That's correct. I have no personal
16 knowledge.

17 THE COURT: All right.

18 BY MR. BOOTH:

19 Q. Mr. Lynch, let me ask you, I forgot to ask you this when we
20 started. Your witness statement, direct testimony, Plaintiff's
21 Exhibit 4100, can you briefly tell me how that statement was
22 prepared?

23 A. Yes. I was asked by the Gibson Dunn attorneys to work on
24 summarizing my report into a declaration, and I began working
25 on that, and then worked with them sitting in a room kind of

DAL8CHE1

Lynch - cross

1 typing -- myself typing to reframe it as a declaration.

2 Q. Did you make all changes to this document, Plaintiff's
3 Exhibit 4100, on your computer sitting in a room typing?

4 A. Yeah. I made all the changes. Gibson Dunn had suggestions
5 that they offered to me. I reviewed those and either accepted
6 them or rejected them.

7 Q. And the final version, if we were to check the metadata on
8 your witness statement, the final version would have metadata
9 off your computer?

10 A. It would. I did use a template for the formatting that they
11 had provided me so there would be some metadata that reflects
12 that template.

13 (Continued on next page)

DALLCHE2

Lynch - cross

1 BY MR. BOOTH:

2 Q. Now, can we go to page 8, paragraph 19, please, of your
3 witness statement.

4 Do you see the statement where it indicates at no
5 point in my analysis did I find any indication in the metadata
6 that Richard Cabrera, and then it goes on to talk about
7 authored or edited; do you see that statement?

8 A. Yes.

9 Q. And would it be fair to say that if Richard Cabrera had
10 authored or edited, reviewed or saved his report and then sent
11 it to Mr. Saenz and Mr. Saenz had saved as the document, you
12 would not find any evidence in the metadata of Richard
13 Cabrera's efforts, would you, sir?

14 A. I can only speak to the metadata in the copy of the
15 document that I analyzed.

16 Q. Let me ask you about Mr. Donziger's hard drive.

17 Did you look at Mr. Donziger's entire hard drive from
18 his computer?

19 A. I didn't look at every single bit on the hard drive. It's
20 hundreds of gigabytes.

21 Q. How did you decide what portions of Mr. Donziger's hard
22 drive to review?

23 A. I performed the analysis and looked at the portions of the
24 hard drive that related to the tasks I had been asked to
25 perform.

DALLCHE2

Lynch - cross

1 Q. Were you given portions of the hard drive to review?

2 A. I was given the entire hard drive.

3 Q. In your review of Mr. Donziger's hard drive, you did not
4 find any versions of the Ecuadorian judgment signed by Judge
5 Zambrano dated February 14, 2011, did you, sir?

6 A. I did not, no.

7 Q. In looking at Mr. Donziger's hard drive, you did not find
8 any versions of the clarification order signed by Judge
9 Zambrano in March of 2011, did you, sir?

10 A. I did not.

11 Q. In looking at that hard drive, you did not find any
12 versions of either the appellate decision nor the clarification
13 of the appellate decision filed by the Ecuadorian court
14 subsequent to March 2011, did you, sir?

15 A. I did not.

16 Q. Let me ask you before I forget, in your work on this
17 particular case, did you review the clarification order signed
18 by Judge Zambrano in March of 2011 for any purpose?

19 A. I hadn't when we met last time. I have read it now.

20 Q. I'm sorry?

21 A. I have read it now.

22 Q. You have read the clarification order now?

23 A. Yes.

24 Q. But you had not read it before we took your deposition
25 what, a few days ago, right?

DALLCHE2

Lynch - cross

1 A. Yeah, just over a week ago. No, I had not.

2 Q. And was there any particular purpose why you looked that
3 the clarification order after the deposition?

4 A. No. Really just because you asked if I had read it.

5 Q. Okay. Did you just read it --

6 THE COURT: Good thing you didn't suggest the decline
7 and fall of the Roman Empire.

8 THE WITNESS: I did not.

9 Q. Did you just read it or did you do any particular analysis
10 of it?

11 A. I just read it. I didn't do any analysis.

12 Q. In terms of the appellate decision and the appellate
13 clarification decision, did you read either one of those
14 Ecuadorian decisions, have you read them ever?

15 A. I have since we met last time.

16 Q. Same setup, I asked you or we asked you and so you read
17 them?

18 A. Yep.

19 Q. Same reason.

20 You have not done any analysis on the appellate
21 decision or the appellate clarification decision though; is
22 that correct?

23 A. I did a little bit of analysis of the -- not a metadata
24 analysis or anything like that. I reviewed the appellate
25 decision a little more closely since it discussed some of the

DALLCHE2

Lynch - cross

1 findings I had in my opinion, in my report and witness
2 statement.

3 Q. What particular analysis did you do?

4 A. I reviewed the statements it made that related to the
5 judgment and the source of the data in the judgment.

6 Q. And was that the only analysis that you did of that
7 particular Ecuadorian order?

8 A. Yes.

9 Q. All right. Let me ask you about Mr. Guerra's hard drive.
10 You testified that about that just for a few minutes in talking
11 about the demonstrative aid. Is that right?

12 A. Yeah, I don't know what demonstrative number it was. I
13 think 4103. I believe that was what it was. I want to see it
14 to double check that.

15 Q. And let's start with the first set of documents, I think,
16 that's discussed in your witness statement.

17 In looking at the Guerra hard drive, you found some
18 orders, I should say draft orders in the Chevron litigation,
19 correct?

20 A. Yes.

21 Q. And you refer to those as draft -- can you turn to page 13.
22 It's actually page 15. Maybe we can start with page 15.

23 You refer to those as draft Guerra orders in the
24 Chevron litigation. I'm sorry, draft Guerra Chevron orders.
25 Do you see that?

DALLCHE2

Lynch - cross

1 A. Yes.

2 Q. And at the top of page 15, you say analysis of orders
3 drafted by Guerra. Do you see that at the very top of the
4 page, the title?

5 A. Yes.

6 Q. What is the basis of your opinion that the draft orders
7 were drafted by Mr. Guerra?

8 A. That they were contained on his hard drive and had metadata
9 that what was consistent with other documents that appear to be
10 drafted by him.

11 Q. But if we look at -- if you need to look at the exhibit
12 that you handed right when we started, which was Plaintiff's
13 Exhibit 4106, or also in the book is your Exhibit 2 from that
14 we talked about at your deposition, you can look at either one.
15 In the book it's tabbed three. I realize that Plaintiff's
16 Exhibit 4106 is the corrected version of what I have in my
17 book. So either one you want to look at.

18 My question is the draft Guerra Chevron orders were
19 all put onto Mr. Guerra's hard drive at the same time, correct?

20 A. That's correct.

21 Q. And that date was July 23, 2010?

22 A. That is correct.

23 Q. And you don't know where those orders had been before they
24 were on the hard drive that then downloaded onto Mr. Guerra's
25 hard drive, correct?

DALLCHE2

Lynch - cross

1 A. No, I do not.

2 Q. And I may have said that incorrectly.

3 July 23, 2010 there was an external hard drive that
4 was attached to Mr. Guerra's computer hard drive, correct?

5 A. Yes.

6 Q. And you don't know where these draft orders were before
7 they were on the external hard drive, correct?

8 A. No, I have no information as to where they were before
9 that.

10 Q. And you don't know what the metadata for those documents
11 would have been prior to that, July 23, 2010, correct?

12 A. I know the metadata that was embedded within them when they
13 were copied. I don't know what other external metadata they
14 may have had.

15 Q. That metadata would be consistent with Mr. Guerra taking
16 those orders from some other computer belonging to some other
17 person, placing them on an external hard drive, and then
18 transferring those orders to his hard drive via the external
19 hard drive, correct?

20 A. Could you repeat that?

21 Q. Yes. The metadata you've outlined in your Plaintiff's
22 Exhibit 4106 would also be consistent with Mr. Guerra taking
23 his external hard drive, removing those orders from someone
24 else's computer onto the external hard drive, and then taking
25 the orders from the external hard drive onto Mr. Guerra's hard

DALLCHE2

Lynch - cross

1 drive, correct?

2 A. For those it could be. I don't have any information as to
3 where they were before the external hard drive.

4 Q. Now, in terms of your description of these orders in your
5 witness statement as having been drafted by Mr. Guerra, earlier
6 I thought I heard you say that in looking at Mr. Guerra's hard
7 drive you identified orders from an earlier date, and I don't
8 recall the date, that Mr. Guerra himself you believed had
9 authored as judge.

10 Did I mishear you or is that what you said?

11 A. I believe I said that they, on their face, they appeared to
12 have been documents with his signature block at the bottom.

13 Q. Where Mr. Guerra actually had his name on the documents for
14 him to sign his name at the bottom; is that right?

15 A. Yes.

16 Q. As opposed to writing an order for someone else that
17 someone else would sign, right?

18 A. Yes.

19 Q. All right. And those particular orders, do you recall the
20 date of those orders that were set up for Mr. Guerra to sign
21 them?

22 A. I don't recall the dates for all of them. There are some
23 in 2006 and 2007, I do recall that, but not specific.

24 Q. Sorry?

25 A. Not specifically the dates.

DALLCHE2

Lynch - cross

1 Q. And you had access to those orders, correct?

2 A. Yes.

3 Q. Did you review those orders?

4 A. Only in relation to establishing when they were copied to
5 the computer and the metadata that appeared similar to the
6 metadata in later documents.

7 Q. Now, Mr. Lynch, your firm, Stroz Friedberg, has the ability
8 to do an analysis called authorship identification, correct?

9 A. I mean I think we have lots of different analyses. I don't
10 recall the specific names, but that sounds like something that
11 we've done.

12 Q. All right. Let me describe it; you tell me if I'm getting
13 it right.

14 Your firm, Stroz Friedberg, has the ability to take
15 two documents and by comparing different features of those
16 documents come to a conclusion about whether the documents were
17 written by the same person or by different people, correct?

18 A. That's correct.

19 Q. And here you had orders that you labeled as draft Guerra
20 Chevron orders, and you also had orders from 2006, 2007 that
21 appeared to be set up for Mr. Guerra to sign himself, correct?
22 You had both of those, correct?

23 A. Correct.

24 Q. Did you or anyone at your firm make a comparison comparing
25 the 2006-2007 era Guerra orders with the draft Guerra Chevron

DALLCHE2

Lynch - cross

1 orders to see if, in your opinion, they were drafted by the
2 same person?

3 A. No, I didn't do a comparison between those documents.

4 Q. Did you attempt to obtain other orders or orders authored
5 by Judge Zambrano that were actually authored by Judge
6 Zambrano, did you make any attempt to do that?

7 A. No. I don't have -- I don't have an opinion for any order
8 whether or not it was authored by Judge Zambrano.

9 Q. You mentioned -- I'm sorry.

10 So your opinion that the orders on Mr. Guerra's hard
11 drive that they were drafted by Mr. Guerra is related to the
12 you said the metadata being consistent with other metadata on
13 the computer. Can you explain what you mean by that?

14 A. The last saved by name appears on those documents and also
15 on lots of other documents that were transferred to the
16 computer that existed on the computer.

17 Q. Which means that Mr. Guerra would have saved those
18 documents onto his computer? I'm sorry. I don't understand.

19 How does that metadata identify Mr. Guerra as opposed
20 to someone else who would have saved the documents?

21 A. I guess -- I guess to back up a little bit. At no point --
22 I'm not trying to state that I know or have any knowledge that
23 Mr. Guerra was sitting at the keyboard. That is not my
24 opinion.

25 Q. Well, if you look at Plaintiff's Exhibit 4106, which is

DALLCHE2

Lynch - cross

1 this sheet.

2 Your Honor, I don't know if you have a copy of that.
3 If not, we can look at, for the purposes of this, we can look
4 at tab 3 in the binder, which I believe is the same, and we can
5 just identify any corrections if we need to talk about those
6 corrections. Is that fair?

7 A. I have 4106.

8 Q. All right.

9 MR. BOOTH: For the Court, your Honor, it would be our
10 tab 3, and I'll point out if I'm talking about anything that
11 was corrected.

12 THE COURT: And that's 4105?

13 MR. BOOTH: Which is 4105, yes, your Honor.

14 Q. And if you look at the top, let's take the top order, the
15 very first one where it says file created 10/20/09.

16 Do you see that?

17 A. Yes.

18 Q. And that would have been before this document ever got onto
19 Mr. Guerra's hard drive after the reinstallation, correct?

20 A. That is before the reinstallation, yeah.

21 Q. It says last save 10/20/09, correct?

22 A. That's correct.

23 Q. You don't know what computer that last save action happened
24 on, do you, sir?

25 A. No, I do not.

DALLCHE2

Lynch - cross

1 Q. Now, you mentioned earlier when you were talking about the
2 demonstrative aids that there was a reinstallation of -- was it
3 the operating system?

4 A. Yes.

5 Q. When you say reinstallation, were you able to determine
6 whether that operating system had been on the computer and was
7 simply reinstalled July 23, 2010?

8 A. I don't know what operating system was on the computer
9 prior to July 23, just that a new one was installed on July 23.

10 Q. You were able to determine this computer, Mr. Guerra's
11 computer, was not a new computer to Mr. Guerra, true?

12 A. I don't know when Mr. Guerra began using it. I do know
13 that he had documents that were copied to it in 2007. So
14 presumably it wasn't -- it must not have been new to him in
15 2010, but I don't know when he started using it.

16 Q. Let me see if I understand what you just said.

17 There were two users for the computer, Mr. Guerra's
18 computer, correct?

19 A. Sorry. I don't believe I said that. I don't know how many
20 users there were.

21 Q. All right. You found documents on Mr. Guerra's computer
22 that had been there dated, that were at least dated 2007,
23 correct?

24 A. Yes.

25 Q. Now, in your work as a forensic computer analyst, do you,

DALLCHE2

Lynch - cross

1 do you -- are you often faced with people who attempt to
2 conceal or destroy evidence by reinstalling their operating
3 systems?

4 A. Yes, I've been faced with that before.

5 Q. Is that something in your experience some people do to try
6 to destroy or conceal evidence?

7 A. Yes, some people do do that to try to destroy evidence.

8 Q. Did you see any evidence here that any files on
9 Mr. Guerra's hard drive were destroyed as a result of the
10 reinstallation of his operating system?

11 A. When Windows was reinstalled, the hard drive was
12 partitioned into two separate drives, the C drive and the D
13 drive, if you will. The reinstallation action did delete the C
14 drive and any documents that -- any documents, including the
15 operating system files, that would have been contained on that.

16 Q. So is then your testimony you don't know what files may or
17 may not have existed on the C drive prior to the
18 reinstallation?

19 A. I do not know what existed on the C drive prior to the
20 reinstallation.

21 Q. You did have a conversation with Mr. Guerra; is that
22 correct?

23 A. I did.

24 Q. And did you ask him why he had reinstalled his operating
25 system?

DALLCHE2

Lynch - cross

1 A. I did not.

2 Q. Let me ask you about the analysis that you did, and I want
3 to focus on the nine or 11, the Guerra draft Chevron orders
4 that you describe in your witness statement. All right.

5 Now, as to those orders would you agree that you --
6 let's turn to the pages. Page 16. Yeah, page 16, I think it's
7 paragraph 38, if you'll turn there with me. And you see where
8 it says I analyzed the draft Guerra Chevron orders to determine
9 whether they shared common text or other similarities.

10 Do you see that?

11 A. I do.

12 Q. By that statement are you saying that you took the draft
13 orders that you found on Mr. Guerra's computer and you compared
14 them to each other?

15 A. Yes.

16 Q. And was the purpose of that for you to make an assessment
17 of whether, in your opinion, those draft Chevron orders were
18 written by the same author?

19 A. The specific purpose was because the documents appeared to
20 contain a lot of overlapping text and I was attempting to
21 determine the order in which they were drafted and authored and
22 confirm that the document, that the order that they appear to
23 have been drafted on its face matched the text that was in
24 them.

25 Q. So in doing this comparison of these documents to each

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1 other, were you looking to form an opinion of whether or not
2 these draft Chevron orders were drafted by the same author?

3 A. I wasn't attempting to attribute the authorship to anyone.

4 Q. Is that something that your firm, Stroz Friedberg, has the
5 ability to do, that is, compare documents to see if they have a
6 common author, even if you don't know who the actual author is?

7 A. We do have linguists who can perform that analysis.

8 Q. And you did not do that here, correct?

9 A. I did not do that.

10 Q. Now, I believe in your witness statement you indicate that
11 you compared then the Guerra draft Chevron orders with orders
12 that you found or were given actually signed by Judge Zambrano
13 in the Chevron case; is that right?

14 A. That's correct.

15 Q. And if you look at your witness statement on page 22, does
16 it indicate when you compared the orders the level of
17 similarity or the percentage of similarity between the draft
18 Chevron orders and the orders actually signed by Judge
19 Zambrano; is that what that table does?

20 A. It does, yes.

21 Q. And that would be table 11, correct?

22 A. That's correct.

23 Q. And the column to the far right, percentage of issued
24 document found in the draft, that would be how much of the
25 draft Guerra Chevron order you actually found when you compared

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1 it to the final Zambrano order, correct?

2 A. It's the other way around. It's the percentage of the
3 issued document that matched exactly to the draft.

4 Q. Okay. Let's take the first one.

5 A. Okay.

6 Q. If you have, you have the final Zambrano signed order, you
7 have a draft Chevron Guerra order. As to that first one there
8 would be a 37 percent overlap between those two.

9 Is that what the table is indicating?

10 A. 37 percent of the issued document matched exactly to the
11 draft on the Guerra computer.

12 Q. Now, you then, you talked earlier when you were describing
13 your demonstrative aids about a second period of orders, I
14 believe is what you called it, beginning December 2010.

15 Did I mishear you or was that accurate?

16 A. Yeah, there was a second period beginning December 2010
17 that had other orders.

18 Q. And that period extended from December of 2010 until what
19 date in terms of the dates of the orders you looked at?

20 A. I don't recall the exact date. It was in 2012. I can
21 check.

22 Q. Would you? Thank you. I wrote it down but I think I wrote
23 it down incorrectly.

24 THE COURT: Let's take our morning break.

25 (Recess)

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1 THE COURT: Go ahead, please, Mr. Booth.

2 MR. BOOTH: Thank you, your Honor.

3 Q. Hello, Mr. Lynch. Have you had a chance at the break to
4 find that second date for me? Let me ask the question better.

5 The second set of orders that you looked at, the
6 earliest date of those was December 2010. Have you had a
7 chance to find the end date for those?

8 A. I believe it was November 2011.

9 Q. Thank you. And there were 105, I think you told us; is
10 that right?

11 A. Of the 105, one predated that range. 104 in that range.

12 Q. And the one that predated the range was what date?

13 A. That was 2009, August 2009.

14 Q. All right. I'm going to ask you a couple questions about
15 the analysis you did on these, on 104 to 105 different orders.

16 First let me ask you, those 105 orders were not in the
17 Chevron case, correct?

18 A. They were in other cases.

19 Q. Cases other than Chevron?

20 A. Yes.

21 Q. And did -- do you have your Plaintiff's Exhibit 4106 with
22 you?

23 A. I do.

24 MR. BOOTH: Your Honor, do you have a copy of 4106?
25 I'd like to refer to that if possible.

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1 THE COURT: I don't.

2 MR. BOOTH: You do not. Can I have one.

3 THE COURT: Thank you.

4 Q. Mr. Lynch, can you look at 4106, and just I want to ask you
5 about the different columns that you have on your chart. I
6 want to start all the way to the right where it says full path.

7 Can you briefly tell the Court what full path means?

8 A. That's the full folder path to the document referenced at
9 that line.

10 Q. Now, you told us that some documents were in more than one
11 place; is that right?

12 A. Yes.

13 Q. And so when we have a document here that has a path, have
14 you identified which of the documents on this chart were in
15 more than one place?

16 THE COURT: Excuse me. By more than one place,
17 explain what you mean.

18 MR. BOOTH: Yes. I apologize. That was a bad
19 question.

20 THE COURT: And for the witness. The witness answered
21 your previous question using that phrase and I'd like to know
22 what he meant.

23 THE WITNESS: There were documents where there were
24 multiple copies on the hard drive, one in one folder and then
25 another file in the same name in another folder.

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1 THE COURT: Thank you.

2 MR. BOOTH: Thank you, your Honor, because that's not
3 what I meant to ask and that's my fault.

4 Q. My question is there were some of these orders that were on
5 a thumb drive or USB device as well as being on the hard drive
6 of Mr. Guerra's computer, correct?

7 A. That's correct.

8 Q. All right. And on this chart you do not identify, do you,
9 which orders were on both a thumb drive and also on a hard
10 drive, do you?

11 A. I do not.

12 Q. All right. And then the next, the next column over,
13 created on media. What is that column?

14 A. That's the date that the file referenced at that line was
15 created on that device.

16 THE COURT: I'm sorry. Someone coughed. It was
17 created on what?

18 THE WITNESS: On that device. So where the full path
19 references it was on the hard drive, it's the date that that
20 file was created on the hard drive. And where the full path
21 references the USB drive, it was the date it was created on the
22 USB drive.

23 Q. Again, if a file was on a USB drive and on Mr. Guerra's
24 hard drive, that date created on media that you have in that
25 column would only pertain to the date created on the hard

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1 drive, correct?

2 A. With the exception of I think there are two documents where
3 I list the location on the thumb drive, the dates only relate
4 to the hard drive.

5 Q. All right. Moving to the left, the date last accessed, is
6 that the last time that someone opened and, well, opened that
7 file?

8 A. Last access is a, I guess, a very fragile date. It can be
9 updated by either a user, or many different kinds of system
10 activity may automatically update that as well.

11 Q. So there were programs on the computer that without you
12 ever opening that file could change that date; is that what
13 you're saying?

14 A. Yes.

15 Q. Moving to the left, last written, would that be the last
16 time someone actually typed something on that document, or you
17 tell me. What does that mean?

18 A. It's the last time the file was modified. So the
19 modification could be someone opening a document and typing.
20 It could also be if, depending on the type of file, any change
21 at all, whether initiated by the system or a user, would update
22 that date.

23 Q. So could that date be changed without anyone actually
24 opening and touching that file, just because the system program
25 on the computer?

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1 A. For some types of files. For the documents in this
2 exhibit, which are Word documents, that date generally would
3 only be changed by some sort of user activity. Not necessarily
4 typing the document, but any formatting change in the Word
5 document and then saving it or anything that the user does and
6 then saves.

7 Q. Moving to the left, last -- time last printed. Would that
8 be last time the document was printed?

9 A. It's the last time the document was printed or, as I was
10 explaining earlier, if the document was created from a
11 template, that date may carry forward from a template.

12 Q. And then we move into the embedded metadata.

13 Does that mean the data that goes with the actual Word
14 document itself?

15 A. Yeah, that embedded metadata is stored in the document
16 itself. So if you move it from one device to another, the
17 embedded metadata will move with it.

18 And just to note, time last printed is one of those
19 embedded metadata items.

20 Q. Thank you. And last saved, that would be the last time the
21 document was saved?

22 A. Yes.

23 Q. File created would be when the file was created, that would
24 be the embedded metadata for that, correct?

25 A. That would be when the file that contains the document was

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1 created. That with last saved can be reset when someone uses a
2 save as, the save as functionality.

3 Q. That was the thing we were talking about earlier; is that
4 right?

5 A. Yes.

6 Q. Are those the only two pieces of metadata that can be reset
7 when a person saves the document as save as?

8 A. No. There are other items of metadata that can be reset by
9 that. On this chart, the revision count and the edit time can
10 be reset and the -- because it is a save, the last save by can
11 also be reset.

12 Q. Moving over, it says total edit time. Is that the total
13 time the file is open on the computer?

14 A. It is. Though, as I mentioned, it can be reset by save as.

15 Q. And then number of revisions, that's the number of
16 different times that the file is saved; is that true?

17 A. Yes, with the caveat that it can be reset.

18 Q. By save as?

19 A. Yes.

20 Q. Now, you've told us that there was some things on the
21 earlier version of this chart that you have fixed with this
22 chart, correct?

23 A. Yes.

24 Q. Were those typos or was that -- can you tell me the
25 mistakes that were on the earlier chart, what were they the

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1 result of?

2 A. They were the result where two files appeared with the
3 exact same name, the edit time was just, as a typo in creating,
4 it was duplicated between both files. The edit time should
5 have been different for the two files and this version corrects
6 that.

7 Q. All right. I asked a bad question.

8 Was that mistake in the metadata or was that mistake
9 in the creating the charts or the typing of the chart?

10 A. It was in creating the chart, in the previous version of
11 the chart.

12 Q. Just the typing of it, right?

13 A. Yes.

14 Q. If you'll look -- you've looked at this and you feel like
15 you have found the typos and corrected the typos in what is now
16 Plaintiff's Exhibit 4106, correct?

17 A. Yes. I corrected all the typos that related to the edit
18 time, and I'm not aware of any other.

19 Q. Would you turn to the second page of 4106 and look at the
20 order that is one, two, three, fourth down from the top, to the
21 far left column, the 68-2010 -- I'll stop there.

22 Do you see it?

23 A. Yes.

24 Q. If you look at the metadata, beginning with number
25 revisions, going over to last save, looking at the embedded

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1 metadata, do you see that?

2 A. Yes.

3 Q. It looks like the file was created on January 12, 2011, at
4 7:22 p.m.; do you see that?

5 A. Yes.

6 Q. The file was last saved on January 12, 2011 at 7:27 p.m.;
7 do you see that?

8 A. Yes.

9 Q. That would be a total of five minutes on the same day,
10 correct? Am I doing my math right, five minutes?

11 A. Yeah, there's five minutes between those two times.

12 Q. Five minutes between when it's created and when it's last
13 saved, in other words, yes?

14 A. Yes, that's what that reflects.

15 Q. And the total edit time that's on your chart for that
16 document is what?

17 A. It lists 114 minutes.

18 Q. And the number of revisions on your chart is three; is that
19 right?

20 A. Yes.

21 Q. That metadata does not match up, does it?

22 A. The edit time -- I don't have an explanation as to why the
23 edit time would be 114 minutes for that one.

24 Q. Now, Mr. Lynch, you talked to us about the USB devices and
25 you, I believe you called them USB devices, and then in your

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1 witness statement they're also referred to as thumb drives.

2 Are those the same things, for the purpose of your testimony?

3 A. Yes.

4 Q. Excluding the original hard drive that was used --

5 THE COURT: Excuse me, Mr. Booth.

6 Is it also accurate, apart from the way you're using
7 the term in the testimony, that a thumb drive is a USB device,
8 but not all USB devices are thumb drives?

9 THE WITNESS: That is correct, yes.

10 THE COURT: Go ahead.

11 MR. BOOTH: Thank you, your Honor.

12 Q. And specifically on that point, the hard drive that we
13 talked about earlier where files were transferred July 23,
14 2010, that would also be a USB device, correct?

15 A. It would, yes.

16 Q. I want to focus on the thumb drives.

17 THE COURT: Excuse me for just a minute.

18 You say it would. Are you saying that you observed
19 some evidence that leads you to the conclusion that it in fact
20 was or are you saying something else?

21 THE WITNESS: I'm not sure I completely understand.

22 THE COURT: Are there hard drives that can be plugged
23 into a second device that communicate other than through a USB
24 port, fire wire, for example?

25 THE WITNESS: Yeah, hard drives can be connected

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1 multiple different ways to the computer. The one from -- that
2 I think we're referring to from July 23 was a USB hard drive.

3 THE COURT: Okay. That's what I was asking. Thank
4 you.

5 MR. BOOTH: Thank you.

6 Q. All right. So focusing on the thumb drive version in this
7 case, all right, you testified about the demonstrative aids.

8 What I think I heard you say was on the thumb drives
9 were the orders in such a way that you believed they come from
10 the Guerra hard drive onto the thumb drive as opposed to vice
11 versa; did I mishear you or is that accurate?

12 A. That's accurate. The created dates on the thumb drives
13 came after the documents were created on the Guerra computer.
14 So the documents existed on the Guerra computer and then later
15 were created on the thumb drives.

16 Q. And is the metadata on the thumb drives metadata that would
17 have been changed if -- strike all that. I'm sorry.

18 On the thumb drives, were there any documents you
19 found where in your opinion they had been on the thumb drive
20 first and then transferred to the Guerra hard drive?

21 A. I didn't review all of the files on the thumb drive, only
22 those files that bore the same names as the ones listed in this
23 exhibit. So I can only speak to the ones that bore the same
24 names that are listed in the exhibit. For those, all of the
25 created dates came after the dates on the Guerra hard drive.

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1 Q. Were there any orders -- let me ask -- any orders other
2 than the ones listed here, draft orders or orders, that
3 appeared to have gone from the thumb drive to the Guerra hard
4 drive that you saw?

5 A. I wouldn't know. I limited my analysis to these files.

6 Q. Now, is it possible for you to examine, do an analysis on a
7 hard drive like Mr. Guerra's and determine what USB devices
8 have been connected to it?

9 A. Yes.

10 Q. And can you also tell in that analysis the date that those
11 USB devices were connected to the computer?

12 A. You can generally tell the date that the device was first
13 connected and last connected. You can't generally tell any of
14 the intermediary dates if it was connected multiple times.

15 Q. Did you do that analysis on Mr. Guerra's computer to
16 determine all the different USB devices, if any, that had been
17 connected to his hard drive?

18 A. I did, yes.

19 Q. And were you able to match up exactly the thumb drives that
20 you took possession of with USB connected history from
21 Mr. Guerra's hard drive?

22 A. Seven of the thumb drives that I took possession of matched
23 exactly. One of the thumb drives is broken and nonfunctional,
24 so I couldn't perform any analysis on it.

25 Q. Were there any thumb drives referenced in your analysis of

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1 the history from the computer of thumb drive attachment that
2 you didn't find when you took possession of the USB thumb drive
3 devices?

4 A. Yes.

5 Q. How many?

6 A. There were 23 thumb drives in total and I took possession
7 of eight. So that leaves 15.

8 Q. And could you tell -- did you do an analysis of the range
9 of dates that those 23 thumb drives had been connected to the
10 computer, the first time and the last time?

11 A. I did, yes.

12 Q. And what was the range of dates for those 23 thumb drive
13 devices?

14 A. They fell from -- I don't recall the exact dates, but after
15 December 2010 until the computer was no longer used. I don't
16 recall the exact dates for every one of them though.

17 THE COURT: Were all 15 of them after December of
18 2010?

19 THE WITNESS: All 23 of the ones I referenced in the
20 demonstrative were after December 2010.

21 THE COURT: All --

22 THE WITNESS: During or after December 2010.

23 Q. And if I understood you, you were only able to analyze
24 seven of the eight thumb drives that you had; is that right?

25 A. That's correct.

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1 Q. So there would have been 16 thumb drives that you had no
2 information about, correct?

3 A. That's correct.

4 Q. And you have no information sitting here today whether
5 those other 15 that are missing are?

6 A. No, I have no information.

7 Q. Now, in looking at the orders, the 105 orders that were on
8 Mr. Guerra's hard drive, you then compared them to the final
9 orders that were filed over Judge Zambrano's name; is that
10 right?

11 A. Can you repeat that?

12 Q. Yes. The 105 orders that you found on Mr. Guerra's hard
13 drive, you compared those to orders that had been filed in the
14 Ecuadorian court, correct?

15 A. Yes.

16 Q. And how many of those orders of those 105 were signed, were
17 orders signed by Judge Zambrano?

18 A. I don't remember the exact breakdown. I did two parts of
19 analysis. One was to review, where possible, the actual signed
20 order. In some cases, the document I received didn't have a
21 signature on it. So for those I looked at the set of documents
22 called the actas de sorteo, A-C-T-A-S, D-E, S-O-R-T-E-O.

23 And those documents tracked, as I understand it, the
24 assignment of cases to judges. And from the signed orders and
25 the actas de sorteo, I found that 101 of the 105 documents were

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1 issued in cases either signed by Mr. Zambrano or in cases
2 assigned to him.

3 Q. Now, in terms of these 105 orders we've been discussing,
4 you did not at any time do an authorship analysis to determine
5 the author of any of those orders, correct?

6 A. No. Beyond observing that some of the metadata was
7 consistent with them having been created on the Guerra
8 computer, I don't know who authored them.

9 Q. And for the 105 orders, you did not do any comparison of
10 common authorship to try to compare the writing style or any
11 characteristics of the order to other orders, correct?

12 A. I did not.

13 Q. And on page 25 of your witness statement, paragraph 61, do
14 you describe, do you describe a process that you supervise at
15 your office of examining some number of these orders?

16 A. Yes, paragraph 61 describes one of the processes.

17 Q. And how many orders, first of all, does paragraph 61
18 describe a process where people at your office actually sat
19 down and compared the draft orders from the Guerra computer
20 with orders filed with the Ecuadorian court?

21 A. Sixty-one describes a comparison of the orders that -- the
22 orders as they were obtained from the Ecuadorian court website
23 to the actual scanned documents from the Ecuadorian court
24 system. The 61 does not describe any comparison of the drafts.

25 Q. I see. Did you compare the drafts from the Guerra hard

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1 drive of these 105 orders to a signed version of that order
2 filed with the Ecuadorian court?

3 A. I compared them to the orders as they were available on the
4 Ecuadorian court system's website. I then compared the
5 documents that were available on the website to the scanned
6 versions of the orders when a scanned version was available.

7 Q. And what findings did you make when you compared the draft
8 orders off the Guerra hard drive with the version from the
9 court system?

10 A. That they had significant amounts of overlapping text, that
11 the draft orders and the versions that were issued had a
12 substantial overlap, and that the drafts predated the issuance
13 of the order.

14 Q. Earlier we looked at a chart that you did where you
15 actually laid out percentages.

16 Did you do such a chart setting out percentages of
17 comparison or overlap in terms of these 105 orders?

18 A. I did, yes.

19 Q. And is that attached in your witness statement?

20 A. I believe it's referenced as a, as a Plaintiff's Exhibit.
21 It's not attached to the witness statement.

22 Q. Let me ask you --

23 THE COURT: Excuse me, which Plaintiff's Exhibit is
24 it?

25 THE WITNESS: 2177.

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1 THE COURT: Thank you.

2 Q. Now, in terms of your review of the Guerra hard drive, it's
3 true, is it not, that you found no version of the Ecuadorian
4 judgment dated February 14, 2011, on Mr. Guerra's hard drive,
5 true?

6 A. I found no version of the Ecuadorian judgment.

7 Q. Is it true you found no version of the clarification order
8 signed by Judge Zambrano in March of 2011 on Mr. Guerra's hard
9 drive, true?

10 A. That's correct.

11 Q. You found no version of the appellate court decision or the
12 clarification order from the appellate court on Mr. Guerra's
13 hard drive, correct?

14 A. That's correct.

15 Q. Now, if you -- I want to talk to you now about the
16 Ecuadorian judgment dated 2/14/11. Okay?

17 A. Okay.

18 Q. In looking at that document, is it your opinion that part
19 of that judgment, portions of that judgment were copied from a
20 document you refer to as the Ecuadorian lawyers' unfiled data
21 compilation; is that your opinion?

22 A. That is my opinion.

23 Q. And can you tell us over how many pages in your opinion do
24 you find the portions that were copied from which you refer to
25 as the Ecuadorian lawyers' unfiled data compilation?

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1 A. The pages of the judgment 101 to 112 contain information
2 that was copied from or derived from the data compilation.

3 Q. Did you make any attempt to determine in word count how
4 many words that was compared to the words of the judgment, for
5 example?

6 A. No, I did not.

7 Q. Did you make any attempt to calculate in any way the
8 percentage of the judgment you believed was copied from the
9 Ecuadorian lawyers' unfiled data compilation?

10 A. I did not.

11 Q. The document that you reviewed when you just told us pages
12 101 through 112, can you turn to tab 4 of the binder,
13 Plaintiff's Exhibit 400.

14 Were the pages you were referring to pages from
15 Plaintiff's Exhibit 400, which is a 188-page document, is that
16 the same document you used in doing the assessment that you
17 described in your report?

18 A. Yeah, I've not reviewed the entire document here. It
19 appears to be the same.

20 Q. Well, the document that you reviewed that we've referred to
21 as the Ecuadorian judgment, 2/14/2011, did the document you
22 reviewed have 188 pages?

23 A. It did. I should make clear I reviewed two different
24 versions of the document. There was a Spanish version and an
25 English translation.

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1 Q. All right. So the pages 101 to 112, would that have been
2 on the English version or the Spanish version?

3 A. The pages for them appear to be the same.

4 Q. I want to ask you about the use of the term Ecuadorian
5 lawyers' unfiled data compilation.

6 Did you make any attempt yourself to search any court
7 records from Ecuador to determine whether the documents you
8 referenced were filed or unfiled?

9 A. No, I have not searched the court record.

10 Q. Do you consider that you have expertise sufficient to allow
11 you to judge whether something is filed or unfiled under
12 Ecuadorian law?

13 A. No, I have no knowledge of the Ecuadorian legal system.

14 Q. When you used that phrase Ecuadorian lawyers' unfiled data
15 compilation, is that just a name that you've given it for the
16 purpose of your report?

17 A. Yeah.

18 Q. You're not forming an opinion for the Court about the
19 unfiled aspect?

20 A. No. I understand, in using that name I'm relying on other
21 experts that I believe have -- I've read the reports and they
22 concluded it was not filed, but I don't have an opinion as to
23 whether or not it was filed.

24 Q. Now, in your review of the Ecuadorian judgment 2/14/11, you
25 did not do any analysis to form an opinion as to the author of

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1 that judgment in its entirety, did you, sir?

2 A. No, I have no opinion as to who authored it.

3 Q. And you didn't do any type of analysis to determine
4 authorship, did you, sir?

5 A. No.

6 Q. You did not do any type of common authorship analysis that
7 you described earlier, did you, sir?

8 A. I have not.

9 Q. And, again, on that document, the judgment of 2/14/11,
10 correct?

11 A. No, I performed no analysis as to who authored document.

12 Q. You did not do any analysis comparing the 2/14/11
13 Ecuadorian judgment to the clarification order signed by Judge
14 Zambrano; is that right?

15 A. I have not.

16 Q. Okay. Can you turn to page 42 of your report, please. I
17 want to ask you about the pit count part of your report.

18 Are you with me?

19 A. Yep.

20 Q. And pit count, when you say pits, you're talking about oil
21 pits; is that right?

22 A. Yeah, that's my understanding.

23 Q. And you reference, I believe on page 42 you reference
24 page 125 of the Ecuadorian judgment of 2/14/11, correct?

25 A. Yes, I referenced 125.

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1 Q. And that should be tabbed in your book, page 125 of the
2 judgment?

3 A. Yes.

4 Q. And we have to flip back and forth. So let me ask you
5 first in your witness statement, paragraph 98, you indicate in
6 the first sentence it talks about the pits and the number 880.

7 Do you see that?

8 A. Yes.

9 Q. Then it goes on to say a number purportedly reached largely
10 through examination of aerial photographs; do you see that?

11 A. Yes.

12 Q. And where do you get the phrase, what is the basis of your
13 statement reached largely through an examination of aerial
14 photographs?

15 A. It states proven -- and this is from page 125 of the
16 judgment -- proven through aerial photographs certified by the
17 geographic military institute which appeared throughout the
18 record analyzed together with -- and then it lists another set
19 of documents.

20 Q. All right. So on page 125, do you see the other things
21 that -- I'm sorry.

22 On page 125 of Plaintiff's Exhibit 400, the Ecuadorian
23 judgment, do you see the other things that it says these
24 photographs were analyzed with?

25 A. Could you repeat that? I want to make sure I understand.

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1 Q. Yes. You referenced me to page 125 of Plaintiff's
2 Exhibit 400, correct?

3 A. Yes.

4 Q. And you read me a line from that judgment, correct?

5 A. Yes.

6 Q. Do you see just past where you read that it says analyzed
7 together with, do you see the things that are listed there on
8 page 125?

9 A. Yes.

10 Q. And one thing is official documents of Petroecuador; is
11 that right?

12 A. Yes.

13 Q. Did you review official documents of Petroecuador?

14 A. I have not, no.

15 Q. Did you take any steps to determine what if any information
16 was included regarding pit count from official documents of
17 Petroecuador?

18 A. I have not.

19 Q. If you look beyond that, there's reference to the expert
20 Gerardo Barros, G-E-R-A-R-D-O, B-A-R-R-O-S, do you see that
21 reference?

22 A. I do.

23 (Continued on next page)

DAL8CHE3

Lynch - cross

1 Q. It says especially by expert Gerardo Barros.

2 Did you take any steps to determine whether Mr. Barros
3 had any information regarding pit count, either written or in
4 any form?

5 A. No.

6 Q. Did anyone give you any assumptions or other information
7 regarding Mr. Barros's information, if any, about pit count?

8 A. No.

9 Q. Did you, in reaching your opinion regarding the pit count
10 issue described in your witness statement, take any steps to
11 determine the actual number of oil pits in the area discussed
12 in the judgment of 2/14/11, Plaintiff's Exhibit 400?

13 A. I have performed no surveys or analysis of how many pits
14 actually exist.

15 Q. Were you asked to assume by anyone what would be the
16 correct number of oil pits in the area being described in the
17 judgment, Plaintiff's Exhibit 400?

18 A. No. I have no opinion or knowledge as to the correct
19 number of pits.

20 Q. Now, in paragraph 98 of your witness statement on page 42,
21 you make reference to Dr. James Ebert. Do you see that?

22 A. I do.

23 Q. The remainder of that paragraph, would you look at it,
24 there is some language about aerial photos and discussion. Do
25 you see that?

DAL8CHE3

Lynch - cross

1 A. Yes.

2 Q. Are those your opinions or are you just putting down what
3 someone told you Mr. Ebert's opinions were?

4 A. Where I state that Dr. Ebert or that I understand that
5 Dr. Ebert analyzed the aerial photographs and concluded that
6 the record did not contain photographs for a significant number
7 of states, and that it is nearly impossible for then Judge
8 Zambrano to have arrived at 880 pits through the examination of
9 aerial photographs, that's based on my having read Dr. Ebert's
10 report.

11 Q. So what you're doing there is you are paraphrasing what you
12 understood Dr. Ebert's report to say, not expressing your own
13 opinion on that topic, is that fair?

14 A. That's fair.

15 Q. Your analysis on the issue of the 880 pits, if I understand
16 it correctly, you found the number 880 in the judgment, as we
17 just saw, the Plaintiff's Exhibit 400, is that right?

18 A. Yes.

19 Q. And then you went to a compilation of data, including a
20 compilation in an annex to the Cabrera report, is that right?

21 A. That's correct.

22 Q. Then using the data in the Cabrera report, you did some
23 math, correct?

24 A. Yes. I used an Excel version of the Cabrera report and
25 performed the calculation on that data.

DAL8CHE3

Lynch - cross

1 Q. When you say calculation, what was the number of oil pits
2 referenced in the Cabrera report, the total number?

3 A. What is the question?

4 Q. That was a bad question. What was the total number of oil
5 pits referenced in annex H1 to the Cabrera report?

6 A. Annex H1 lists 916 pits.

7 Q. Does anywhere in the Cabrera report the number 880 appear?

8 A. It doesn't appear as a number. It can be calculated using
9 that data.

10 Q. So if you take the number 916 from the Cabrera report, you
11 can subtract a number from 916, based on data in the Cabrera
12 report, and you can end up with a number of 880, is that what
13 you're saying?

14 A. Yeah. You can analyze the Cabrera report and information
15 there, and I guess cut it such that it results in 880.

16 Q. You have no personal knowledge of how the author of the
17 Ecuadorian judgment, Plaintiff's Exhibit 400, actually arrived
18 at the number 880, do you, sir?

19 A. No. My opinion is that that number 880 can be derived from
20 the Cabrera report.

21 Q. That number can be derived?

22 A. Yes.

23 Q. Just a couple of more, Mr. Lynch.

24 On page 44 of your witness statement?

25 A. What page number was that?

DAL8CHE3

Lynch - cross

1 Q. 44 of your witness statement.

2 On that page do you describe the process by which
3 documents were obtained from Mr. Donziger's hard drive?

4 A. Yeah. The discussion begins on page 44.

5 Q. The document you referred to is the Ecuadorian plaintiffs'
6 lawyers' unfiled data compilation. Is it your understanding
7 that document came from Mr. Donziger's hard drive?

8 A. No. That document, the unfiled data compilation was not on
9 Mr. Donziger's hard drive.

10 Q. Where did that, if you know, where did that document, the
11 Ecuadorian plaintiffs' lawyers' unfiled data compilation
12 document, where did that come from, if you know?

13 A. It was produced by a consultant working for the Ecuadorian
14 plaintiffs.

15 Q. Do you know the date that document was produced to Chevron?

16 A. I do not.

17 Q. Do you know the date it was turned over by the consultant?
18 Let me ask it that way.

19 A. I do not.

20 Q. Counsel was kind enough to hand me the exhibits to your
21 testimony. It's in two boxes. Do you recognize this as being
22 about the size of one of the eight binders of your exhibits?

23 THE COURT: That's not exactly a very helpful
24 question, do you think, Mr. Booth? It's about the size of a
25 big looseleaf book.

DAL8CHE3

Lynch - cross

1 Q. That looks about right for one of them?

2 A. Yes. It looks about right for one of them.

3 MR. BOOTH: Those are my questions. Thank you.

4 THE COURT: Thank you.

5 Redirect.

6 REDIRECT EXAMINATION

7 BY MS. NEUMAN:

8 Q. Mr. Lynch, I want to return to the topic of the data
9 transfer that occurred from the hard drive via a USB port to
10 Mr. Guerra's computer in July of 2010. Do you have that in
11 mind?

12 A. Yeah. I recall that.

13 Q. Let me ask you, is there anything unusual about
14 reinstalling Windows on a computer?

15 A. No. It happens frequently. It's common for people, if
16 their computer is sluggish or they have got a virus or
17 something like that, to reinstall Windows.

18 Q. Would it be common to reinstall Windows if you wanted to
19 upgrade the version of Windows you're using?

20 A. Yes.

21 Q. Prior to a reinstallation of Windows on a computer, is it
22 also typical for users to transfer their files from that
23 portion of the computer to an external hard drive?

24 A. Yes. Depending on how you perform an installation or
25 reinstallation of Windows, it can overwrite data that was once

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Lynch - redirect

1 on your computer. So it's common practice by many to back up
2 the data on their computer to an external device before they
3 reinstall it.

4 Q. As I understand it in what you have testified to, Windows
5 was reinstalled on Mr. Guerra's computer, and then shortly
6 thereafter a significant amount of data was transferred back on
7 to the computer, is that right?

8 A. Yes.

9 Q. Over what period of time did that data transfer occur, more
10 or less?

11 A. I don't recall the exact time. I believe it was 16
12 minutes.

13 Q. 16 minutes. During those 16 minutes that the hard drive
14 was hooked up to Mr. Guerra's computer and data was
15 transferring, did just the orders in the Chevron case transfer
16 or did significant amounts of other information transfer?

17 A. There was a lot more than just the drafts of Chevron
18 orders. There were over 4,000 different files, many of which,
19 as my demonstrative showed earlier, included his family
20 photographs and his CV.

21 Q. Based on your analysis of those over 4,000 files that were
22 transferred to Mr. Guerra's computer in a 16 minute time span,
23 was the transfer consistent with Mr. Guerra having downloaded
24 the information off of his computer on to a hard drive, having
25 then reinstalled Windows, and then having uploaded the

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Lynch - redirect

1 information back on to the computer?

2 A. It's consistent with that.

3 MS. NEUMAN: I would like to put up on the screen
4 Plaintiff's Exhibit 2180.

5 Q. Mr. Lynch, is 2180 a graphic representation of what you
6 determined in terms of when the Chevron orders were last saved
7 according to their embedded metadata versus when they were
8 issued by Judge Zambrano?

9 A. Yes, it is.

10 Q. Except for the ninth order, were all the orders saved prior
11 to the time they were issued by Judge Zambrano?

12 A. Yes. The orders were all saved before they were issued.

13 Q. With regard to the ninth one, do you have any view as to
14 why the last saved date postdates the issuance date?

15 A. It appears that for that document, that on March 7, the
16 document was saved using the save-as functionality which would
17 reset the metadata for that document.

18 Q. Now, in table 11 of your report, at page 22, I believe that
19 counsel was questioning you about the percentage overlap
20 between the draft Chevron orders on Guerra's computer and the
21 orders actually issued by Judge Zambrano. Do you recall that?

22 A. Yes, I do.

23 Q. Look at table 11, and for the first order am I correct that
24 the order issued by Judge Zambrano only contained 37 percent of
25 the material that was in the draft order on the Guerra

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Lynch - redirect

1 computer?

2 A. That's correct.

3 THE COURT: Let me just interject.

4 Are you saying here that 37 percent of the Zambrano
5 order was found in identical form in what you call the Guerra
6 draft, is that what you're saying?

7 THE WITNESS: That is what I am saying.

8 THE COURT: As opposed to 37 percent of the draft
9 being in the Zambrano order.

10 THE WITNESS: Yes. That's exactly correct.

11 THE COURT: Thank you. Go ahead.

12 Q. On table 11, it shows in the embedded metadata that the
13 first order was last saved on October 20, 2009, is that
14 correct?

15 A. That's correct.

16 Q. Can you use the microphone?

17 A. That's correct. I will move closer to it.

18 Q. Thank you very much.

19 Then the order was issued the next day, October 21,
20 2009, is that correct?

21 A. That's correct.

22 Q. According to the information on your table 11, is it
23 consistent with that information for Judge Zambrano to have
24 copied the material that was in draft form in Judge Guerra's
25 computer into a larger order and then issued it the next day on

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Lynch - redirect

1 October 21, 2009?

2 A. I think it's consistent with that, yes.

3 Q. In each case, the Chevron orders that were on Judge
4 Guerra's computers were only a portion of the order that was
5 subsequently issued by Judge Zambrano, is that right?

6 A. That's correct.

7 Q. And you have not seen any other source on which this series
8 of draft Chevron orders versus the final Chevron orders
9 resided, correct?

10 A. No. I have not analyzed any other source that has these
11 set of drafts.

12 Q. Why don't you go to the second page of Exhibit 2108 -- I'm
13 sorry, 2180.

14 THE COURT: What is 2180, is that in evidence?

15 MS. NEUMAN: It's a demonstrative from Mr. Lynch's
16 opinion I neglected to move in earlier.

17 THE COURT: We will do that.

18 2180. Thank you.

19 Q. What is shown here on the second page of Exhibit 2180, Mr.
20 Lynch?

21 A. This is similar to the other timeline. It's the date in
22 orange that the document was created on the Guerra computer as
23 it relates to the date it was -- the order was then issued by
24 Zambrano in purple.

25 Q. In each case, for the 101 orders that you looked at in this

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Lynch - redirect

1 time frame, was the draft on the Guerra computer created before
2 the order was issued by Judge Zambrano?

3 A. I believe in all but one instance the order was created on
4 the Guerra computer before it was issued.

5 Q. Now, were all of these orders -- let me withdraw that.

6 If you had wanted to obtain these orders from Judge
7 Zambrano's computer while they were being drafted, and then put
8 them on Mr. Guerra's computer, on how many different occasions
9 would you have had to have downloaded the draft order from
10 Judge Zambrano's computer and then have uploaded it to
11 Mr. Guerra's computer?

12 MR. BOOTH: Objection. Speculation.

13 THE COURT: First of all, I am confused by the form of
14 the question. So let's try it again.

15 MS. NEUMAN: Certainly, your Honor.

16 Q. You have been able to tell when each of the documents was
17 created and last saved on the Guerra computer, correct?

18 A. Yes, that's correct.

19 Q. As I read the second page of Exhibit 2180, those were a lot
20 of different dates, is that right?

21 A. Yes.

22 Q. Subsequent to each of those dates, the orders were issued
23 by Judge Zambrano, correct?

24 A. Yes.

25 Q. Now, because you know that the December 19, 2010 order was

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Lynch - redirect

1 last saved on the Guerra computer on December 19, 2010, if
2 someone was going to transfer the order on to that computer,
3 they would have had to do it as of that date, right?

4 A. Yes.

5 Q. And if you look down at the bottom, you have an order from
6 January of 2011, January 7th of 2011. Do you see that?

7 A. I do.

8 Q. They would have had to put that order on Guerra's computer
9 by January 7th of 2011, is that right?

10 A. It was created on the Guerra computer on January 7, I
11 believe. I can check the exhibit.

12 Q. Is created on the computer similar to transferred on to the
13 computer?

14 A. Yes.

15 Q. As you're using it?

16 A. Yes.

17 Q. So the orders on the Guerra computer that were portions of
18 draft orders subsequently issued by Judge Zambrano were put on
19 that computer, whether they were created on the computer or
20 transferred to the computer, on how many different occasions?

21 A. On 59 different days. So the orders were created on the
22 Guerra computer 59 different days all prior, except for one
23 instance, all prior to when the order was issued or the ruling
24 was issued in the Ecuadorian court system. For the one that
25 appears having been created after, like one of the other

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Lynch - redirect

1 Chevron documents, appears to have been a save as.

2 Q. Does your analysis rule out the possibility that someone
3 hypothetically gained access to Judge Zambrano's computer,
4 downloaded these 101 files all at the same time, and then
5 uploaded them on to Mr. Guerra's computer?

6 A. Yes. It rules that out, that it could not have happened
7 all at the same time.

8 Q. In fact, it had to happen on at least 59 separate
9 occasions, is that right?

10 A. Yes.

11 Q. From your analysis, do these documents appear to have
12 actually been created on the Guerra computer as opposed to
13 having been transferred on to the Guerra computer?

14 A. Some of them appear to have been created on the Guerra
15 computer, yes.

16 Q. Now, I want to turn your attention, Mr. Lynch --

17 MS. NEUMAN: I would like to put on the screen
18 Plaintiff's Exhibit 4101.

19 Q. You mentioned during your examination by counsel that you
20 had analyzed the Guerra computer to make sure it was not
21 tampered with. Do you recall that?

22 A. Yes.

23 Q. In doing that analysis, how many log files did you analyze
24 in reaching that conclusion?

25 A. I looked at tens of thousands, if not hundreds of thousands

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Lynch - redirect

1 of log entries.

2 Q. Were all the entries that you looked at consistent with the
3 Guerra computer not having been tampered with?

4 A. Yes. They were all consistent with it not having been
5 tampered with.

6 Q. Did your analysis include analyzing the virus log files?

7 A. Yes, it did.

8 Q. Does Plaintiff's Exhibit 4101 relate to your analysis of
9 the virus log files on the Guerra computer?

10 A. Yes, it does.

11 Q. Can you explain what you found in that regard, Mr. Lynch?

12 A. Sure. Let me start by describing the virus logs a little
13 bit.

14 Mr. Guerra's computer had on it an anti-virus program,
15 and every time that anti-virus program run or started or
16 updated or did any number of things that it would do in doing
17 its job, it recorded data into a log file. That log file
18 contains, or the log records that it was making contained the
19 date that the computer believed it to be when that log was
20 being written to the file.

21 Because of the way the computer operates and the way
22 the clock operates, the log files should always appear in
23 sequential order, such that the first log entry in the file
24 would be the first ever written by the virus program, the last
25 one would be the last entry ever written by the virus program,

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Lynch - redirect

1 and all of the log entries in between those would be in
2 sequential order.

3 In 4101, I am displaying a hypothetical example of
4 what you may see on a computer that had been tampered with. In
5 this example, the log file jumps. It starts sequentially
6 advancing a few seconds, and then jumps back in time nearly two
7 years, and there is a block of logs that are two years out of
8 date compared to all the logs near them, and it's not in
9 sequential order. That's what I would expect to see on a
10 computer that had been tampered with in some way.

11 Q. Did you see anything like that on Mr. Guerra's computer's
12 virus log?

13 A. No. On the next page of that demonstrative, I show an
14 example from Mr. Guerra's machine. Mr. Guerra's machine
15 contained 7,342 different time stamps in the anti-virus logs,
16 and all of them were in sequential order, which is exactly what
17 I would expect if the computer had not been tampered with.

18 Q. Did you also do an analysis of the Microsoft Windows update
19 logs in determining that the Guerra computer had not been
20 tampered with?

21 A. I did.

22 MS. NEUMAN: Can you put on the screen Plaintiff's
23 Exhibit 4102, please?

24 Q. Mr. Lynch, is Exhibit 4102 a demonstrative related to your
25 analysis of the Windows update logs on the Guerra computer?

DAL8CHE3

Lynch - redirect

1 A. It is, yes.

2 Q. Can you explain that analysis, please?

3 A. Sure. Similar to the anti-virus logs, when Windows -- I
4 guess let me back up one second.

5 Windows or Microsoft, the publishers of Windows, make
6 available a series of updates for the computer, and those
7 updates are available to be downloaded through the Internet.
8 Microsoft Windows XP, which was running on the Guerra machine,
9 will automatically periodically check for updates and then
10 download them and install them.

11 When those updates are downloaded and installed, a log
12 entry is created that similar to the anti-virus logs records
13 when the computer believed that action took place. So the
14 example shown on this screen is of a Windows update that the
15 computer believed was installed July 23, 2010. And this is a
16 hypothetical example.

17 This is an example of how you can see that there has
18 been some sort of tampering with the computer, because when you
19 actually check the history of that update, Microsoft had not
20 released it until nearly a month later on August 9. So the
21 computer believed that it was July 23 when this update was
22 installed, and that would be impossible, this update did not
23 exist when the computer believed it to be -- when it was July
24 23. So the computer must have been mistaken in believing that
25 it was July 23. It must have been after August 9, 2010.

DAL8CHE3

Lynch - redirect

1 Q. In your professional experience, are these kinds of
2 mistakes made by the computer when the computer clock has been
3 tampered with?

4 A. Yes. That's generally the source of these types of
5 mistakes.

6 Q. Did you see any anomalies in the Microsoft log on the
7 Guerra computer?

8 A. No. On the next page I have an example from the Guerra
9 computer for the same Windows update. On the Guerra computer,
10 all of the Windows updates were installed after they had been
11 released by Microsoft, which is what I would expect. Some of
12 the logs were installed immediately after Windows was
13 reinstalled on the computer, and then all of the
14 subsequent -- all the subsequent Windows updates were installed
15 a few days after they were released by Microsoft, which is
16 completely consistent with a computer that was operating
17 normally and no one was tampering with the clock.

18 Q. Did you do whatever analysis in your expert opinion you
19 needed to do to form your opinion that the Guerra computer had
20 not been tampered with or fabricated?

21 A. Yes. I performed an extensive analysis to see if there
22 were any issues, and I found none.

23 Q. Is it your opinion, to a reasonable degree of scientific
24 certainty, that the Guerra computer has not been tampered with
25 or fabricated?

DAL8CHE3

Lynch - redirect

1 A. Yes, it is.

2 Q. Can you turn to page 25 of your direct testimony?

3 A. Yes.

4 Q. Counsel was asking you some questions about the judgments
5 to which you compared the draft on the Guerra computer. Do you
6 recall that?

7 A. I do.

8 Q. Now, you said you had two sources for those judgments. In
9 some cases you had a signed hard copy and in other cases you
10 had to rely exclusively on the Ecuadorian court's Web site, am
11 I correct about that?

12 A. Yeah. I didn't have a hard copy in the sense of a piece of
13 paper, but I had a scanned version of a hard copy document with
14 a signature on it.

15 Q. So for a certain number of the orders you could see Judge
16 Zambrano's signature on the order, is that right?

17 A. That's right.

18 Q. And those orders matched to a significant degree with the
19 drafts of the same order found on the Guerra computer, is that
20 right?

21 A. Yes.

22 Q. For the orders where you couldn't see or you didn't have a
23 scanned hard copy, you went to the Ecuadorian court's Web site,
24 correct?

25 A. I pulled copies of the text for all of the orders from the

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Lynch - redirect

1 court Web site.

2 Q. The court Web site, does it show the signature block for
3 the person that issued the order or not?

4 A. It does not, no.

5 Q. It doesn't show that.

6 In the absence of having the signature block available
7 to you, what other information did you pull off the Web site to
8 lead to your conclusion that these were judgments likely issued
9 by Judge Zambrano?

10 A. From the Web site, I pulled the text of the order and the
11 date it was issued, and then using another set of documents,
12 the Actas de Sorteo, I reviewed those to determine what judge
13 had been assigned the cases that the judgment was issued in or
14 the rulings were issued in.

15 Q. In each of the 101 cases, you were able to confirm either
16 that you had an order actually signed by Judge Zambrano or that
17 the Ecuadorian Web site said the case was assigned to him to
18 decide, is that right?

19 A. Yes. For 101 of the 105, the document was either -- I
20 either had a hard copy that reflected it was issued by Mr.
21 Zambrano or the Actas de Sorteo showed that it was a case
22 assigned to Mr. Zambrano.

23 MS. NEUMAN: I would like to put on the screen
24 Plaintiff's Exhibit 2177.

25 Q. Is Exhibit 2177 an exhibit that you had prepared, Mr.

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Lynch - redirect

1 Lynch?

2 A. It is, yes.

3 Q. In the last column, if we can focus on the last column, can
4 you tell us what is shown in the last column?

5 A. That's the, I guess the similar computation as I described
6 for the orders in the Chevron case. It's the percentage of the
7 issued document that appears as an exact match to the draft
8 found on Mr. Guerra's machine.

9 Q. In the majority of the cases, is the document that was
10 issued by Judge Zambrano over a 90 percent match with the draft
11 that was on the Guerra computer?

12 A. I don't recall the exact number or percentage for each one,
13 but a very substantial number had more than a 90 percent
14 overlap.

15 Q. Is it correct that in no case was there 100 percent
16 overlap?

17 A. No. There was a header in the issued document that didn't
18 appear in any of the drafts. So for that reason alone there
19 would never have been a 100 percent match.

20 Q. Let me go, Mr. Lynch, to your opinion that the unfiled data
21 compilation was used in the drafting of the Ecuadorian
22 judgment.

23 A. OK.

24 Q. How many different types of overlap did you find between
25 the unfiled data compilation and the judgment?

DAL8CHE3

Lynch - redirect

1 A. There were four different kinds of overlap.

2 First, the names of some samples appeared to have been
3 copied from or appeared identically in the data compilation in
4 the judgment.

5 Second, there were a number of data irregularities
6 that matched between the judgment and the data compilation, but
7 those did not match the file, the lab results.

8 There was, third, a misidentified expert, where the
9 expert for a particular set of results was misattributed in
10 data compilation and in the judgment.

11 And then there was a series of statistics that were
12 calculated where the statistics overlapped exactly with the
13 data compilation, overlapped from the judgment to the data
14 compilation.

15 Q. On what page of the judgment did those statistics appear?

16 A. It appeared on pages 101 and 102.

17 MS. NEUMAN: I am going to ask to put on the screen
18 Plaintiff's Exhibit 4104, please?

19 Q. Mr. Lynch, is this a chart of a comparison of those
20 percentages you just referenced as they appear in the
21 Ecuadorian judgment versus your calculations from the
22 plaintiffs' data compilation?

23 A. It is.

24 Q. The plaintiffs' data compilation, what type of file is it?

25 A. It's an Excel file.

DAL8CHE3

Lynch - redirect

1 Q. In order to calculate the percentages in the far right
2 column of Exhibit 4104, what is your view on the amount of
3 proficiency you would have to have with Excel to calculate
4 those percentages using the data compilation?

5 MR. BOOTH: Objection. Form. Expert opinion.
6 Speculation.

7 THE COURT: Certainly as to form sustained.

8 Q. Mr. Lynch, did you use the data compilation to calculate
9 the percentages shown in the far right-hand column of Exhibit
10 4104?

11 A. I did.

12 Q. Can you describe how you went about doing that?

13 A. Yes. First, I created a formula to implement some logic
14 tests in Excel to bucket each one of the results into three
15 different categories, whether or not the test result was less
16 than 1,000, between 1,000 and 5,000, or greater than 5,000.

17 I then used pivot tables to then calculate the number
18 of results based on those buckets that appeared in a number of
19 different categories, those categories such as whether or not
20 the Ecuadorian data compilation attributed the result to Texaco
21 or to the plaintiff.

22 And then, finally, used another series of formulas to
23 calculate the statistics based on the calculation using the
24 pivot tables.

25 Q. Having gone through all of those steps to calculate these

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Lynch - redirect

1 percentages, what is your opinion on the level of proficiency
2 with Excel someone would need to have in order to be able to
3 make those same calculations?

4 MR. BOOTH: Objection. Form.

5 Your Honor, also, I believe we have gone far afield
6 from my cross-examination on this topic.

7 THE COURT: Let's deal with that second objection.

8 How is this related to the cross, this question?

9 MS. NEUMAN: I believe, your Honor, he examined the
10 witness on his opinion that the unfiled data compilation was
11 used to create the numbers in the judgment specifically. And
12 he also discussed with the witness the calculation of these
13 percentages.

14 THE COURT: Well, Mr. Booth.

15 MR. BOOTH: No, your Honor. I asked him if that was
16 his opinion. He said yes. I asked him over how many pages he
17 believed the copied materials existed? I asked him percentage
18 of words that he believed were copied compared to the total
19 percentage in the verdict. I asked him the percentage of pages
20 he believed were copied compared to the total number of pages,
21 and I left the topic. This seems to be a rehash of the direct
22 examination that I did not go into at all.

23 THE COURT: I think this door was well open, but I
24 think you should rephrase the question, Ms. Neuman.

25 MS. NEUMAN: Thank you, your Honor.

DAL8CHE3

Lynch - redirect

1 BY MS. NEUMAN:

2 Q. Mr. Lynch, when you created the buckets into which you
3 put -- let me withdraw that.

4 In the Excel database, is what you have columns of TPH
5 samples, and the sample results are noted in a column, and the
6 fact that TPH is noted in another column, is that right?

7 A. The data compilation, it's not just TPH results; it's lots
8 of different other types of results. It's a total of 65, over
9 65,000 results. The type of test that it was, the sample name,
10 who the sample is attributed to, and the result were all listed
11 in separate columns.

12 Q. In order to figure out how many TPH results that were
13 greater than 5,000 were in the unfiled plaintiffs' database,
14 did you have to do a query?

15 A. I had to write a formula to calculate that.

16 Q. After you wrote that formula and ran it on the unfiled data
17 compilation, you determined that, according to that
18 compilation, 10 percent of the sample results were greater than
19 5,000 for TPH, is that right?

20 A. Yes.

21 Q. Did that match the percentage used in the judgment?

22 A. Yeah. The judgment appeared to have rounded that number.
23 It didn't include any decimal points. But my calculation, if
24 you round it the same way, is identical to that 10 percent.

25 Q. When you performed those calculations for each of the

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Lynch - redirect

1 categories culled out in the judgment for TPH, did you find
2 that you were able to identically or within a rounding error
3 match what you got using the plaintiffs' data compilation?

4 A. Yes.

5 Q. Is that the basis of your opinion that the data compilation
6 was used by whoever put these percentages in the Ecuadorian
7 judgment?

8 A. That's one of the bases of my opinion.

9 Q. On how many --

10 THE COURT: Let me ask a different question, please,
11 Mr. Lynch.

12 You would get substantially the same result, would you
13 not, if the data used by whoever wrote the judgment and the
14 data in the unfiled compilation, just to use the term that's
15 been used, had a common source, is that right?

16 THE WITNESS: If there was another compilation with
17 the same data in it, you could end up with the same result.

18 One thing that's notable about this calculation is
19 that it assumes what is, I guess, an incorrect interpretation
20 of the data. The data compilation listed TPH results in
21 actually four different ways. They were listed as TPH results,
22 and then as two different subparts, TPH DRO and TPH GRO.

23 My understanding from the documents that I have read
24 is that you have to add DRO and GRO together to arrive at the
25 full TPH number. But in calculating the statistics, you don't

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Lynch - redirect

1 perform that addition. You have to have a data set that
2 separates out DRO and GRO exactly the same way that the data
3 compilation does.

4 THE COURT: All right. But if there were a common
5 antecedent to both documents, you would get to the same place,
6 right?

7 THE WITNESS: If you had the same set of data, you
8 could get to the same place.

9 THE COURT: Proceed.

10 BY MS. NEUMAN:

11 Q. Did plaintiffs' data compilation list a single sample
12 result for TPH on multiple rows?

13 A. Yeah. In some cases a single test result, or a single
14 sample location or sample name appears next to multiple
15 results. The two different subparts, DRO and GRO, are
16 sometimes listed separately, and they are also sometimes listed
17 alongside a cumulative TPH result. So a single result is
18 sometimes counted twice or sometimes even three times in the
19 data compilation.

20 Q. If the drafter of the judgment intended to only count each
21 TPH sample that was taken in the field once, are the
22 percentages that were derived from the plaintiffs' data
23 compilation correct or in error?

24 A. They are not correct.

25 Q. If you went through the Ecuadorian court record and you

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Lynch - redirect

1 counted up the number of lab results you had for TPH, and then
2 you bucketed those lab results into these same buckets that you
3 have used on Exhibit 4104, would you get a different result
4 than the percentages that appear in the judgment?

5 A. I have not seen every single filed lab result, but I do
6 know that some of the filed lab results didn't appear to list
7 TPH split as apparently into its different subparts. In one of
8 the lab results that I saw the DRO subpart was not listed as
9 TPH DRO. It was listed with a separate name. So I think you
10 would have to, I guess, misinterpret the lab results to
11 calculate it this way.

12 Q. To calculate it the way the judgment did?

13 A. Yes.

14 Q. Counsel mentioned to you the appellate court's decision.
15 Do you recall that?

16 A. I do, yes.

17 Q. Did you review the appellate court's decision since your
18 deposition?

19 A. Yes, I have.

20 Q. Does that decision discuss to some extent the overlap
21 between the plaintiffs' data compilation and the trial court's
22 judgment?

23 A. It does.

24 Q. Based on your analysis of the appellate court's discussion
25 of that overlap, was an alternative source for any of the

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Lynch - redirect

1 information that you opine originated from the unfiled
2 plaintiffs' data compilation provided by the appellate court?

3 A. No, there was no alternative source. I guess one thing I
4 did note is that the appellate decision referenced that it had
5 no understanding of what the database was, which seemed to me
6 to confirm the opinion that it was not filed.

7 Q. Did the appellate decision confirm the errors in the
8 judgment that you believe originated from the plaintiffs' data
9 compilation?

10 A. Yes. It either was silent on them or it confirmed that an
11 error existed.

12 Q. Versus what was in the record, correct?

13 A. Correct.

14 Q. I would like to go to your opinion, Mr. Lynch, on the copy
15 of the Cabrera report that was attached to an e-mail, dated
16 April 1, 2008, that was sent from gringograndote@gmail.com to
17 Mr. Donziger. Do you recall that?

18 A. I do.

19 Q. As I understand your opinion, it is that Mr. Saenz last
20 saved the document on March 31, 2008, at 11:09 a.m., is that
21 correct?

22 A. Yes, that's correct.

23 Q. A version of the Cabrera report that was last saved by Mr.
24 Saenz on March 31, 2008, is an exact match to what Mr. Cabrera
25 ultimately filed, excepting his signature and the court stamp,

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Lynch - redirect

1 is that right?

2 A. Yes.

3 Q. Now, counsel asked you if you knew anything about how that
4 document got on to Mr. Saenz' computer. Do you recall that
5 generally?

6 A. Yes.

7 Q. Had you had access to Mr. Saenz' computer, would you have
8 been able to determine more facts with regard to the
9 origination of that version of the Cabrera report?

10 MR. BOOTH: Objection. Speculation.

11 THE COURT: Overruled.

12 A. Yes. I would have been able to determine more information
13 about how it came to be in Mr. Saenz' possession.

14 Q. If you had access to Mr. Saenz' computer, could you have
15 searched that computer to see if it contained a draft of the
16 Ecuadorian court's judgment?

17 A. Yes. Unless the computer had been wiped or the drafts on
18 it destroyed, yes, I would have been able to do that.

19 Q. Finally, Mr. Lynch, I wanted to go back to your opinion
20 that the 880 pit number in the judgment was derived from annex
21 H1 to the Guerra report. Do you have that opinion in mind?

22 A. Yeah, I do.

23 Q. How did you use annex H1 to reach the conclusion that the
24 880 pits in the judgment came from that electronic file?

25 A. I reviewed an English translation of the judgment, and in

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Lynch - redirect

1 reviewing it noted that the judgment was describing the number
2 of pits that had some sort of environmental impact and couldn't
3 be attributed to Petroecuador.

4 I then looked at Anexo H1 and removed those pits that
5 were attributed to Petroecuador or were listed as having no
6 impact, and when I removed those, what was left was the 880
7 pits.

8 Q. Did you remove those based on what the judgment author had
9 indicated it was doing in arriving at the number of 880?

10 A. Yes. I removed those based on my understanding of what the
11 judgment was listing it was describing as 880.

12 Q. Is it your opinion, to a reasonable degree of scientific
13 certainty, that it's more likely than not that annex H1 was
14 used to get the 880 pit number that appears in the judgment?

15 MR. BOOTH: Objection. Speculation. Not qualified to
16 render that opinion.

17 THE COURT: Well, I will hear the opinion and hear the
18 basis and we will see.

19 Proceed.

20 A. Relying on Mr. Ebert's or Dr. Ebert's opinion that it was
21 not as the judgment describes based on the aerial photographs,
22 the only source that I have seen is an original version of
23 Anexo H1, an Excel version, and then Anexo H1 itself. And my
24 opinion is that it is more likely than not, given the analysis
25 that I performed and the data that I had available to me, that

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Lynch - redirect

1 it was derived from Anexo H1 or the original Excel version.

2 THE COURT: But there is quite clearly material
3 referred to in the judgment by this point that you have never
4 looked at, is that correct?

5 THE WITNESS: That's correct.

6 THE COURT: Ms. Neuman, how much longer do you expect
7 to be?

8 MS. NEUMAN: Three minutes, your Honor.

9 THE COURT: All right.

10 MS. NEUMAN: I think I am actually done, your Honor.

11 We have marked as 4100A all of the exhibits referenced
12 and authenticated in Mr. Lynch's direct testimony, and we would
13 move the admission of those exhibits.

14 MR. BOOTH: I believe some were demonstrative aids,
15 and I would object to moving into evidence demonstrative aids
16 because they are not exhibits.

17 THE COURT: They are received on the same basis as
18 previously, and I have made careful note of what is
19 demonstrative as distinguished from evidentiary.

20 (Plaintiff's Exhibit 4100A received in evidence)

21 THE COURT: Mr. Gomez.

22 MR. GOMEZ: I have a few questions on a subject not
23 yet covered.

24 THE COURT: All right.

25 MR. GOMEZ: Thank you, your Honor.

DAL8CHE3

Lynch - redirect

1 RECROSS-EXAMINATION

2 BY MR. GOMEZ:

3 Q. Good afternoon, Mr. Lynch.

4 A. Good afternoon.

5 Q. Sir, did you investigate any e-mail accounts belonging to
6 Mr. Guerra?

7 A. I did, yes.

8 Q. In fact, you reviewed Mr. Guerra's Hotmail e-mail account?

9 A. Yes.

10 Q. Did you investigate any other e-mail accounts?

11 A. No, not for Mr. Guerra.

12 Q. In your analysis of Mr. Guerra's e-mail accounts, is it
13 fair to say you found no evidence of mail being sent to and
14 from Mr. Guerra to Steven Donziger?

15 A. No. There was a contact containing Mr. Donziger's e-mail
16 address, but there were no e-mails between the two accounts.

17 Q. Is it fair to say, also, you found no evidence of e-mails
18 going to and from Mr. Guerra to a Pablo Fajardo?

19 A. There were no e-mails between Mr. Guerra and Mr. Fajardo.

20 Q. Is it also fair to say that you found no e-mails going to
21 and from Mr. Guerra and Mr. Zambrano?

22 A. Yes. There were no e-mails between those two.

23 Q. In your investigation of the e-mails, did you find any
24 indication of any draft orders being sent to and from
25 Mr. Guerra?

DAL8CHE3

Lynch - cross

1 A. No.

2 MR. GOMEZ: Thank you.

3 THE COURT: Thank you.

4 Any further examination of this witness?

5 MR. BOOTH: No, your Honor. Thank you.

6 THE COURT: Mr. Lynch, thank you.

7 We will break for lunch. See you about 10 past 2.

8 (Luncheon recess)

DALLCHE4

Leonard - direct

AFTERNOON SESSION

2:12 p.m.

THE COURT: Who's the next witness?

MS. NEUMAN: Professor Leonard, your Honor.

ROBERT A. LEONARD,

called as a witness by the Plaintiff,

having been duly sworn, testified as follows:

THE COURT: All right. Let's proceed.

DIRECT EXAMINATION

BY MS. NEUMAN:

Q. Good afternoon, Professor Leonard.

A. Good afternoon.

Q. Are you a professor of linguistics?

A. Yes.

Q. And have you ever been qualified as an expert in linguistics by any court?

THE COURT: Not necessary to do this. I assume it's in his statement, right?

MS. NEUMAN: Yes, your Honor.

May I approach the witness?

THE COURT: Yes.

Q. Professor Leonard, do you have Exhibit 3700 in front of you?

A. Yes.

Q. Is that your direct testimony in this matter?

DALLCHE4

Leonard - direct

1 A. It is.

2 Q. Are the statements in Exhibit 3700 true and accurate?

3 A. Yes.

4 Q. Is that your signature on the last page?

5 A. Yes.

6 MS. NEUMAN: Plaintiffs move the admission of
7 Exhibit 3700.

8 THE COURT: Received on the same basis as the prior
9 exhibits of like nature.

10 MS. NEUMAN: Thank you, your Honor.

11 (Plaintiff's Exhibit 3700 received in evidence)

12 Q. Mr. Leonard, did you prepare any demonstratives in
13 connection with your testimony?

14 A. Yes.

15 Q. Can we have on the screen Exhibit PX3721.

16 A. Yes.

17 Q. Is Exhibit 3721 one of your demonstratives?

18 A. It is.

19 Q. Could you describe what this demonstrative shows to the
20 Court, please?

21 A. This is a PowerPoint that shows not only that material from
22 the unfiled Lago Agrio plaintiffs' materials winds up in the
23 Ecuadorian judgment, but that it seems to first have been
24 information gathered from the index summaries of the unfiled
25 index summaries of the plaintiffs.

DALLCHE4

Leonard - direct

1 Q. Could you walk through the demonstrative, please,
2 indicating when to page turn.

3 A. Turn. Here is the passage in the index summary and the
4 highlighted red is what has -- is going to be taken out and
5 rearranged into the index summary.

6 Information is added and then it is this information,
7 this passage verbatim that winds up in the Ecuadorian judgment.

8 MS. NEUMAN: Can we go back to the first page of that
9 exhibit.

10 Q. Professor Leonard, is this the page of the record from
11 which the information comes? I think you misspoke and called
12 this the summary as well?

13 A. Oh, yes, quite right. This is the official record, 3378.

14 Q. Thank you.

15 MS. NEUMAN: We also have as Exhibit 3700A, your
16 Honor, the exhibits that we'd move in in connection with
17 Professor Leonard's testimony.

18 THE COURT: All right. The exhibits listed on
19 Plaintiff's 3700A for identification are received on the same
20 basis as previously.

21 (Plaintiff's Exhibit 3700A received in evidence)

22 MS. NEUMAN: Pass the witness, your Honor.

23 THE COURT: Thank you. And just remind me of the
24 number of the demonstrative, please?

25 MS. NEUMAN: 3721, your Honor.

DALLCHE4

Leonard - direct

1 THE COURT: Thank you.

2 Mr. Booth.

3 MR. BOOTH: Yes, your Honor. Thank you.

4 May I? I'm sorry. I didn't ask.

5 May I proceed, your Honor?

6 THE COURT: Yes, you may.

7 CROSS-EXAMINATION

8 BY MR. BOOTH:

9 Q. Good afternoon.

10 A. Good afternoon.

11 Q. Do you prefer professor or doctor?

12 A. It's all the same.

13 Q. Okay. Doctor, I'm Rainey Booth. Nice to meet you.

14 A. Nice to meet you.

15 Q. I want to go through briefly your employment.

16 It indicates in your direct testimony that you are a
17 professor of linguistics at Hofstra; is that right?

18 A. Yes.

19 Q. Do you work at or for any other businesses currently?

20 A. I have my own consulting practice.

21 Q. And what is the name of your consulting practice?

22 A. Robert Leonard & Associates.

23 Q. Can you turn to tab 2 of the black binder I handed you.

24 Can you verify that is a Xerox copy of the website
25 from your consulting business, Robert Leonard & Associates?

DALLCHE4

Leonard - cross

1 A. It appears to be from that website.

2 Q. Thank you. And, Doctor, can you also turn to tab 6 in the
3 binder, and do you recognize these, this set of documents?

4 THE COURT: Just so we have clarity, the last exhibit
5 was Defendant's 1327. This one is Defendant's Exhibit 1333.

6 MR. BOOTH: Thank you, your Honor.

7 Q. Do you recognize the documents labeled at the bottom of the
8 Exhibit DX1332?

9 THE COURT: 1333.

10 Q. Sorry. 1333.

11 A. It appears to be a Hofstra web page.

12 Q. And is that the web page from the university that you teach
13 at?

14 A. Yes.

15 Q. And one more. Can you look behind I believe tab 6.

16 THE COURT: That's the one you just were looking at.

17 MR. BOOTH: I apologize.

18 Q. Can you look behind tab 7. And that should be EXDX1332.

19 THE COURT: Not in the book you gave me.

20 MR. BOOTH: May I?

21 Q. Okay. The one I want is tab 5. Sorry.

22 Is that EXDX1332?

23 A. It is.

24 Q. Do you recognize those documents?

25 A. Yes.

DALLCHE4

Leonard - cross

1 Q. And what are those documents?

2 A. These appear to be from the website of forensic
3 consultants, who asked if I wanted to be listed with them to
4 potentially work with them on cases.

5 Q. All right. Is that a business that you are employed by or
6 is that just a website that lists you as a possible consultant?

7 A. It is a website that lists me as a possible consultant.

8 Q. In this particular case, have you been compensated by
9 Chevron or the law firm Gibson Dunn for your time in looking at
10 these issues?

11 A. In the matter we're here about today?

12 Q. Yes.

13 A. Yes, I have.

14 Q. And what if any business have you been working on behalf
15 of, has it been through your consulting business or through
16 your work at Hofstra?

17 A. It's been for myself as a sole proprietor.

18 Q. In your consulting business?

19 A. Correct.

20 Q. Can you tell me when you were first hired to look at issues
21 in this particular case, even if it's a general range of time?

22 A. May 2011.

23 Q. And who defined for you the issues to consider in this
24 case?

25 A. I was asked to analyze materials by Gibson Dunn.

DALLCHE4

Leonard - cross

1 Q. And what specifically were you asked to analyze, what
2 specifically were you asked to do with the materials you were
3 to analyze?

4 A. I was asked to analyze sets of documents for potential
5 overlap that could be attributed to either chance or set phrase
6 versus common authorship.

7 Q. Since you were retained in this matter, have you reviewed
8 the expert reports of any other expert in this case?

9 A. Yes.

10 Q. What experts are those?

11 A. Mr. Lynch, Mr. Hernandez, and Dr. Juola.

12 Q. I'm going to briefly ask you about some of your
13 qualifications.

14 You indicated already you have a PhD in linguistics;
15 is that right?

16 A. Yes.

17 Q. And can you explain for the Court what, first of all, is
18 linguistics in your opinion a science, is it a scientific
19 pursuit?

20 A. Yes.

21 Q. Can you explain to the Court what linguistics is, the
22 science of linguistics?

23 A. Yes.

24 Q. Would you explain that to the Court, please.

25 A. Linguistics is the science that tries to analyze virtually

DALLCHE4

Leonard - cross

1 every aspect of language, normally, human language. And it
2 does this in a way that all sciences operate -- by systematic
3 detailed observation, by building theories, and testing
4 hypotheses to advance the theoretical understanding so that we
5 may explain the nonrandom distribution of the linguistic data.

6 Q. And how long have you worked in the field of linguistics?

7 A. Since 1970.

8 Q. Forensic linguistics, is that a field that you work in
9 currently?

10 A. Forensic linguistics is the term that we use to describe
11 the analysis of linguistic data that is related to the courts
12 or forensic matters.

13 Q. And how long have you worked in the or how long have you
14 worked as a forensic linguistic expert?

15 A. I have done the odd case for many years, but heavily for
16 about ten years.

17 Q. Doctor, let me ask you, if you could turn back to tab 5,
18 which is Defendant's Exhibit 1332, DX1332. If you look at the
19 third page after that tab.

20 A. 1332, the forensic consultants?

21 Q. Yes.

22 A. Okay. And you asked where in there?

23 Q. It's the beginning on the third page, page 3 of four of
24 that tab.

25 A. Mm-hmm.

DALLCHE4

Leonard - cross

1 Q. Can you look over that, can you confirm for me that is an
2 accurate biographical sketch of your experience, your
3 qualification history, the people you've worked for, that type
4 of thing. On page 4, if you would just verify.

5 A. This dates from several years ago.

6 Q. Is the information contained in it accurate, just maybe not
7 complete at this point, is that what you're saying?

8 A. Let me read it through. Yes, it looks accurate.

9 MR. BOOTH: Your Honor, we would move into evidence
10 DX1332.

11 MS. NEUMAN: No objection, your Honor.

12 THE COURT: Received.

13 (Defendant's Exhibit 1332 received in evidence)

14 Q. And, Doctor, that will save some time going through your
15 credentials and that type of thing.

16 All right. I'm going to ask you about your the
17 Hofstra website, which I believe is tab 6 and it is DX1333.

18 A. Yes.

19 Q. Now, at Hofstra, you are a professor, you told us, right?

20 A. Yes.

21 Q. And is there a particular institute at Hofstra that you
22 work as the director of that deals with forensic linguistics?

23 A. Yes.

24 Q. And can you explain to the Court what that institute is?

25 A. It's the Institute for Forensic Linguistics Threat

DALLCHE4

Leonard - cross

1 Assessment and Strategic Analysis, which I'm the director of,
2 and it is our research arm of our graduate program.

3 Q. And as -- do you teach as part of your role as director of
4 that institute?

5 A. We do pro bono case assistance to, for example, the Midwest
6 Innocence Project via that institute, and I am the one who
7 directs those internships and coordinates the research of our
8 interns working for eventual use by the Midwest Innocence
9 Project. So in that sense, I am the teacher, I'm listed as the
10 teacher for whatever the course number is that is internship.

11 Q. If you also turn to page 3 of tab 6, the same Exhibit
12 DX1333, there's a discussion about, well, if you look at that
13 page, I'm going to ask you something about that.

14 Let me just ask my question: Is Hofstra the only
15 university in this country that has a master's program in
16 forensic linguistics in the United States?

17 A. Well, our master's degree granted -- we were granted
18 ability to bestow degrees by the New York State Department of
19 Education. Our actual master's is in Linguistics: Forensic
20 Linguistics, which means we teach the science of linguistics,
21 and when we can, we use data from what has now come to be known
22 as forensic linguistics, which is really any legal related
23 language data.

24 Q. And your program at Hofstra is the only one in the country
25 that provides a master's degree; in that correct?

DALLCHE4

Leonard - cross

1 A. As far as I know, yes.

2 Q. There are some in other countries, but not here other than
3 yours, correct?

4 A. That is correct.

5 Q. If you look at tab 2 of the binder, it is Defendant's
6 Exhibit DX1327. I believe you identified that as a printed
7 copy of the website from your consulting business Robert
8 Leonard & Associates.

9 Do you see that?

10 THE COURT: Let's just proceed. I assume he sees it.

11 MR. BOOTH: Sorry, your Honor.

12 Q. In the field of linguistics, there's a number of different
13 types of analysis and assessments that one can do; is that
14 right?

15 Let me ask a better question. In the field of
16 forensic linguistics, there's a wide range of analyses that can
17 be done, true?

18 A. There's a wide variety of data that we can analyze, if
19 that's what you mean.

20 Q. That's a better way to say it.

21 If you look at Defendant's Exhibit 1327, does this,
22 does your website detail, without us having to go through it
23 piece by piece, the different types of data that you analyze in
24 forming opinions in different cases that you've looked at as a
25 forensic linguistic expert?

DALLCHE4

Leonard - cross

1 A. The intent, yes, but the intent of this site is to make the
2 public aware. I was not trying to be exhaustive or overly
3 technical, of course.

4 MR. BOOTH: Your Honor, we would move into evidence
5 Defendant's Exhibit 1327.

6 MS. NEUMAN: No objection, your Honor.

7 I just want to clarify as to Defendant's Exhibit 1332
8 that counsel was moving in the two pages that the witness
9 authenticated as opposed to all four that are in the book.

10 THE COURT: That's my understanding.

11 MR. BOOTH: Yes, your Honor, that was my intent. I
12 apologize. Just those two pages.

13 THE COURT: No apology needed.

14 Q. Doctor, in terms of the work that you do in forensic
15 linguistics, if you look at your witness statement paragraphs
16 13, 14, there's some discussion about different cases that
17 you've worked on. Actually, let me go to 14, 15, and 16.

18 Can you give the Court some idea of the types of cases
19 you've worked on, just very brief summary of the types of
20 issues you've worked at as a forensic linguistic expert as
21 outlined in your witness statement?

22 THE COURT: Counsel, it's right here. Avoiding this
23 is precisely the purpose of doing it in writing.

24 MR. BOOTH: I apologize.

25 Q. If you look at tab 16, do you see the one of the cases

DALLCHE4

Leonard - cross

1 indicated or described is analyze murder related letters for
2 Pennsylvania state police; do you see that?

3 A. Yes.

4 Q. Was that a case where you sought to determine the
5 authorship of some letters that had been written following a
6 murder?

7 A. And prior to the murder.

8 Q. And prior to the murder?

9 A. Yes.

10 Q. Was your analysis in that case what's referred to as
11 authorship identification?

12 A. No.

13 Q. What was it?

14 A. Authorship analysis.

15 Q. Sorry, authorship analysis.

16 You were seeking to identify the author of the
17 letters; is that right?

18 A. No.

19 Q. What were you seeking to do?

20 A. The police and the triers of fact were seeking to identify
21 the authors of the letters. I was analyzing the linguistic
22 data to see whether the best hypothesis was common authorship
23 and also common authorship with a set of known documents.

24 Q. And can you describe what, can you define what common
25 authorship means?

DALLCHE4

Leonard - cross

1 A. That there is a single, in the simplest situation, author
2 to two sets of documents or to two documents.

3 Q. And is that an analysis that you do as a forensic
4 linguistic expert?

5 A. Authorship analysis?

6 Q. Yes.

7 A. Yes.

8 Q. And common authorship analysis, are they the same thing?

9 A. Yes. Well, it depends on the task with authorship
10 analysis.

11 Q. Now, Doctor, in this case a number of the documents are in
12 Spanish, correct?

13 A. We're off the Pennsylvania case now?

14 Q. Sorry. In this case we're here on today --

15 A. Yes.

16 Q. -- a number of the documents are in Spanish; is that right?

17 A. Yes.

18 Q. And are you -- does the fact that the documents are in
19 Spanish, does that in any way inhibit your ability to render
20 opinions in this particular case in your opinion?

21 A. No.

22 Q. Are you fluent in Spanish?

23 A. I have facility in Spanish. I studied Spanish. I ran a
24 business in Puerto Rico in Spanish a long time ago. I'm no
25 longer fluent, however.

DALLCHE4

Leonard - cross

1 Q. The term used in your witness statement, I see a term used
2 in your witness statement, plagiarism.

3 Can you define for me what plagiarism is as you're
4 using the term?

5 A. As I say in the witness statement, I was using the
6 definition given by the Merriam-Webster online dictionary,
7 which is the practice of taking someone else's work or ideas
8 and passing them off as one's own. Sorry, it was the Oxford
9 online dictionary, not Merriam-Webster.

10 Q. Does your definition of plagiarism as you are using that
11 term in your witness statement, does it include a judgment that
12 someone has done something wrong?

13 Do you understand the question?

14 Let me ask: Are there circumstances in your opinion
15 where a person could copy from another, not attribute
16 authorship to the other, but because of the circumstances, that
17 act not be plagiarism?

18 A. I'm not sure. So let me try to return to your prior
19 question. I'm not making any moral judgments. Plagiarism is a
20 subset of authorship and it is a popularly known, common term.
21 One of the reasons I used plagiarism in this declaration is
22 because it is popularly and easily understood. It's the same
23 kind of idea of avoiding all the technical terms that I might
24 have used in my linguistic analysis.

25 Q. Going back to my question, Doctor -- thank you for that

DALLCHE4

Leonard - cross

1 explanation. I will follow up.

2 But going back to my question, are there circumstances
3 in your judgment as a linguistic expert where, for example, I
4 could copy from another, not attribute authorship, but because
5 of the circumstances it not be considered plagiarism, that it
6 would be okay for me to have done that?

7 A. For example?

8 Q. Well, the only one I can think of was if I go to school and
9 I copy my notes from my friend because I was sick yesterday and
10 I copied it word for word, on the exam, wrote down what he had
11 shown me, I wouldn't have to attribute authorship. In the
12 alternative, if I copied his term paper word for word, that
13 might be a problem?

14 THE COURT: Counsel, I don't think this is getting us
15 anywhere. Can we move on.

16 MR. BOOTH: I apologize.

17 Q. Do you understand -- apologize.

18 My question is, Doctor, every time someone copies
19 without attribution, in your opinion is that plagiarism?

20 A. Not necessarily.

21 Q. You mentioned, I think, that plagiarism is a subset in your
22 opinion of authorship analysis.

23 Can you tell me what similarities, differences there
24 are between an assessment of plagiarism and an assessment of
25 authorship identification?

DALLCHE4

Leonard - cross

1 A. Well, in the Pennsylvania case, which was a homicide, the
2 intent of the trier of fact and the police was not to assay
3 plagiarism, but to see whether the husband of the murdered
4 woman penned the letters that threatened her death, that under
5 a different name claimed to have committed her murder, and the
6 known writings of the husband from his workplace. So
7 plagiarism was not the issue per se, although, of course, it
8 was an authorship case, just like the current matter is an
9 authorship case.

10 Q. Do you have expertise in understanding what must be
11 attributed by a judge in Ecuador when writing an order?

12 MS. NEUMAN: Objection, beyond the scope.

13 THE COURT: Sustained.

14 Q. Are you offering an opinion about what is appropriate or
15 inappropriate for a judge to cite in an Ecuadorian judgment?

16 MS. NEUMAN: Objection, beyond the scope, calls for a
17 legal conclusion.

18 THE COURT: Sustained.

19 MR. BOOTH: Your Honor, I would move to strike any
20 reference to plagiarism under in terms of the judgment.

21 THE COURT: Denied.

22 Q. Doctor, in this particular case, if you'll turn to page 8
23 of your witness statement.

24 A. Yes.

25 Q. Paragraph 34, under analysis, can you read the first line

DALLCHE4

Leonard - cross

1 to yourself from the first line of paragraph or the first
2 sentence of paragraph 34 to yourself, and I want to ask you
3 something. Have you done that?

4 A. Yes.

5 Q. As you approach this case, you look to whether the, in your
6 opinion, the Ecuadorian judgment of 2/14/11 had been
7 plagiarized in whole or in part, correct?

8 A. I think better whether in whole or in part it had been
9 plagiarized.

10 Q. And your opinion on that issue was that the Ecuadorian
11 judgment of 2/14/11 had been plagiarized in part, correct?

12 A. Yes.

13 Q. You have not formed an opinion in this case that the
14 Ecuadorian judgment of 2/14/11 was plagiarized completely,
15 correct?

16 A. You mean whether the entirety of the Ecuadorian judgment
17 had been plagiarized from other sources?

18 Q. That's a better way to say it, yes.

19 A. I have not formed an opinion on that.

20 Q. And in looking at the portions that you believe were
21 plagiarized, can you tell us over what number of pages you
22 believe plagiarized materials are found in the Ecuadorian
23 judgment of 2/14/11?

24 A. That's normally not a very useful metric.

25 THE COURT: But perhaps we could just answer the

DALLCHE4

Leonard - cross

1 question.

2 THE WITNESS: I'm trying to remember, your Honor, I'm
3 sorry. I believe it's 22 pages.

4 Q. If you look at page 2 of your report, paragraph 4.

5 A. Yes.

6 Q. Do you see you indicate 23 pages?

7 A. I stand corrected, yes.

8 Q. And that would be portions of 23 pages, correct?

9 A. Some were virtually entire, some only had one word.

10 Q. Did you do an assessment to determine the word count, for
11 example, how many words were plagiarized versus the words in
12 the document, did you do any sort of percentage assessment of
13 that?

14 A. Percentage of what?

15 Q. Bad question.

16 Did you compare the number of words that had been
17 plagiarized with the total number of words in the Ecuadorian
18 judgment of 2/14/11?

19 A. No.

20 Q. Did you do any sort of percentage calculation based on the
21 number of pages over which the plagiarized materials appears
22 versus the total number of pages of the judgment?

23 A. I believe it's around 12 percent of the pages.

24 Q. And if you'll turn to the last tab in your book, in your
25 binder that I handed you, and look at Plaintiff's Exhibit

DALLCHE4

Leonard - cross

1 No. 400.

2 A. Yes.

3 Q. And can you verify for me that when you describe page count
4 that we were just discussing, you were making reference to this
5 document, Plaintiff's Exhibit 400?

6 A. No.

7 Q. What page count, what document did you use for your page
8 count?

9 A. The Spanish version of the Ecuadorian judgment.

10 Q. And I think, well, can you tell me, the Spanish version,
11 how many pages did it have, do you know?

12 A. I don't recall.

13 Q. That's fine.

14 Now, Doctor, can you tell us briefly how you did your
15 analysis of whether portions of the Ecuadorian judgment were
16 plagiarized from other documents?

17 A. I compared -- I looked at overlapping text strings of words
18 and symbols that occurred in the six documents that appear to
19 be source documents. That's counting two documents for the
20 index summaries and the Ecuadorian judgment. And then I
21 ascertained whether they were better explained by random chance
22 or set phrases or copying.

23 Since I found many examples of 20, 30, 40, 120 words
24 in precisely the same order, identical mistakes, identical
25 misattributions, I concluded that copying was the superior

DALLCHE4

Leonard - cross

1 hypothesis to explain the overlap rather than trying to
2 attribute it to random chance or set phrases.

3 Q. In forming your opinion in this case, did you make any
4 attempt to ascertain any demographic information about the
5 author of the Ecuadorian judgment 2/14/11?

6 MS. NEUMAN: Objection, beyond the scope.

7 THE COURT: Overruled.

8 A. No.

9 Q. In forming your opinions in this case, did you take any
10 steps to identify using authorship analysis the author of the
11 Ecuadorian judgment from 2/14/11 in its entirety?

12 MS. NEUMAN: Objection, assumes facts not in evidence.

13 THE COURT: Overruled.

14 Well, no. I take it back. Sustained. It assumes
15 that there is a single author.

16 MR. BOOTH: Let me ask a better question.

17 Q. Did you in forming your opinions make any assessment as to
18 the number of authors who contributed to writing the judgment
19 of 2/14/11, the Ecuadorian judgment dated 2/14/11?

20 A. Only that the author of some of it was the author or
21 authors of the other documents.

22 Q. In forming your opinions in this case, did you compare the
23 Ecuadorian judgment of 2/14/11 to any other document for the
24 purpose of -- that's a bad question.

25 Other than the plagiarism analysis you've already

DALLCHE4

Leonard - cross

described for us, did you compare the Ecuadorian judgment of 2/14/11 to any other document to look to see if you believed there was a common author between those two documents?

A. Yes.

Q. What other documents were those?

A. The entire record, the filed record.

Q. Let me ask you specifically, did you compare the Ecuadorian judgment of 2/14/11 to the clarification order signed by Judge Zambrano in March of 2011 to look at the issue of common authorship between those two documents?

A. No.

Q. Did you compare the Ecuadorian judgment of 2/14/11 to any orders written by Mr. Guerra to look at the issue of common authorship?

A. The Ecuadorian judgment of 2/14/11 to by Mr. Guerra?

Q. So any orders or documents authored by Mr. Guerra?

A. No.

Q. Did you compare the Ecuadorian judgment of 2/14/11 to any documents authored by Judge Zambrano?

A. You mean any known documents by Judge Zambrano?

Q. Better way to say it.

A. No, no.

Q. For the purpose of forming your opinions, is it true that you did not review the clarification order signed by Judge Zambrano March of 2011 for any analysis; is that true?

DALLCHE4

Leonard - cross

1 A. For my opinion here on the plagiarism of the Ecuadorian
2 judgment, no.

3 Q. For the purpose of rendering opinions in this case, did you
4 review the Ecuadorian appellate decision?

5 MS. NEUMAN: Objection, beyond the scope.

6 THE COURT: Mr. Booth, what do you say to that?

7 MR. BOOTH: I have one more question after this, your
8 Honor. I'm just trying to identify the things he did not do
9 and I have one more question.

10 THE COURT: I'll allow it.

11 Q. Do you need me to repeat it?

12 A. If you wouldn't mind.

13 Q. For the purpose of forming your opinions in this case, did
14 you review or analyze the Ecuadorian appellate court decision
15 in the underlying case?

16 A. Written when?

17 Q. I have to look it up.

18 A. What year?

19 Q. I have to look it up. 2012.

20 A. No.

21 Q. Did you review the Ecuadorian appellate court clarification
22 court decision written in 2012 for the purpose of doing any
23 analysis in this case?

24 A. No.

25 MR. BOOTH: May I have one second.

DALLCHE4

Leonard - cross

1 THE COURT: Yes.

2 Q. Did you in forming your opinions in this case compare the
3 Ecuadorian judgment of 2/14/11 to any documents authored by
4 Steven Donziger?

5 MS. NEUMAN: Objection, assumes facts not in evidence.

6 THE COURT: What might those be, Ms. Neuman?

7 MS. NEUMAN: Who the authors of the various documents
8 are, your Honor.

9 THE COURT: Overruled.

10 A. I was going to say that I don't know what documents
11 Mr. Donziger authored or did not author, even if one doesn't
12 know even when one's signature is under a document who has
13 authored it.

14 MR. BOOTH: Those are all my questions, your Honor.
15 Thank you.

16 THE COURT: Thank you.

17 Any redirect?

18 MS. NEUMAN: Yes, your Honor. Briefly.

19 THE COURT: Excuse me, Mr. Gomez, anything for you?

20 MR. GOMEZ: No, your Honor.

21 THE COURT: Ms. Neuman.

22 MS. NEUMAN: Thank you, your Honor.

23 REDIRECT EXAMINATION

24 BY MS. NEUMAN:

25 Q. Just a couple questions, Professor Leonard.

DALLCHE4

Leonard - redirect

1 You were asked questions and gave answers about
2 whether you formed an opinion regarding the entirety of the
3 Ecuadorian judgment being plagiarized.

4 Do you recall that?

5 A. Yes.

6 Q. If you had more documents from individuals who allegedly
7 participated in drafting the Ecuadorian judgment, would that
8 help you in determining whether the entire judgment was
9 plagiarized?

10 A. Yes.

11 Q. If you had access to Spanish language documents from the
12 Lago Agrio plaintiffs' lawyers' computers, could you have
13 requested the search of those computers to determine whether
14 additional portions of the Ecuadorian judgment were
15 plagiarized?

16 A. Yes.

17 MS. NEUMAN: Nothing further, your Honor.

18 MR. BOOTH: May I?

19 THE COURT: Yes.

20 RE CROSS EXAMINATION

21 BY MR. BOOTH:

22 Q. Dr. Leonard, is it your testimony that you did not have the
23 documents necessary to do either an authorship or a common
24 authorship analysis in this case or did I misunderstand your
25 testimony?

DALLCHE4

Leonard - recross

1 THE COURT: I thought you did, counselor.

2 MR. BOOTH: Then I apologize, your Honor.

3 THE COURT: Do you want to try to rephrase it?

4 MR. BOOTH: Well, no. I misheard it. I apologize.

5 Thank you, Doctor.

6 THE COURT: Anything else, counsel?

7 MS. NEUMAN: No, your Honor.

8 THE COURT: Dr. Leonard, you're excused. Thank you.

9 (Witness excused)

10 THE COURT: Next witness.

11 MR. MASTRO: Your Honor, Chevron calls Dr. Adolfo

12 Callejas.

13 ALDOLFO CALLEJAS RIBADENEIRA,

14 called as a witness by the Plaintiff,

15 having been duly sworn, testified through the Spanish

16 interpreter as follows:

17 THE COURT: All right, Mr. Mastro, you may proceed.

18 MR. MASTRO: Thank you, your Honor.

19 May I approach the witness?

20 THE COURT: You may.

21 DIRECT EXAMINATION

22 BY MR. MASTRO:

23 Q. Mr. Callejas, did you prepare a declaration in this case?

24 A. Yes, I did.

25 Q. And is what's been marked here as Plaintiff's Exhibit 4300

DALLCHE4

Callejas - direct

1 a true and correct copy of that declaration, sir?

2 A. Yes, it is.

3 Q. Dr. Callejas, I direct your attention to page 42, the last
4 page. Is that your signature, sir?

5 A. Yes, it's my signature.

6 Q. Sir, your declaration is in English, correct?

7 A. Yes, that's correct.

8 Q. You are comfortable preparing your declaration in English,
9 correct, sir?

10 A. Yes, that's so.

11 Q. Please explain to the Court, Dr. Callejas, why you're
12 testifying in Spanish.

13 A. Because I want the words that I say to exactly reflect my
14 thinking and I can do that only in Spanish, which is my native
15 language.

16 Q. Thank you, Dr. Callejas.

17 And, Dr. Callejas, we redacted, we took out some
18 paragraphs in your declaration, correct, sir?

19 A. Yes, that's correct.

20 Q. And in addition to what -- strike that.

21 In addition to what has already been taken out of your
22 declaration, I wanted to apprise the Court of two additional
23 changes before your testimony begins today, sir.

24 First, can you go to paragraph 47.

25 A. Yes, I see it now.

DALLCHE4

Callejas - direct

1 Q. Are these additional changes you have made in your
2 declaration as of today?

3 A. Yes, that is so.

4 Q. And, please, directing your attention to paragraph 73,
5 Dr. Callejas, are these additional changes in your declaration
6 that you have made today, sir?

7 A. Yes, that is so.

8 Q. Dr. Callejas, besides the paragraphs that you have taken
9 out or changes made in your declaration, is everything else in
10 your declaration true and correct, sir?

11 A. Yes, it is.

12 Q. Your declaration was true and correct at the time you
13 signed it, correct, sir?

14 A. It was to the best of my knowledge on that day.

15 Q. And sitting here today, your declaration is true and
16 correct?

17 A. Yes, it is.

18 Q. You offer your declaration as your full and complete direct
19 testimony in this case, Dr. Callejas?

20 A. Yes, I present it that way.

21 MR. MASTRO: Your Honor, we offer PX4300 into evidence
22 and we further offer PX4300A as the exhibits listed in
23 Dr. Callejas's declaration that are offered into evidence.

24 THE COURT: Both received on the same basis as before.

25 (Plaintiff's Exhibits 4300, 4300A received in

DALLCHE4

Callejas - direct

1 evidence)

2 MR. MASTRO: Thank you, your Honor.

3 Your Honor, I turn over the witness.

4 THE COURT: Thank you. Cross-examination.

5 MS. FRIEDMAN: Thank you, your Honor.

6 THE COURT: And, Mr. Friedman, before you start, let
7 me just say that I'm aware that despite my requests, some of
8 the colorful rhetoric has remained in here, and it would not be
9 an efficient use of time to quarrel with the witness about the
10 rhetoric. I know the difference between facts and rhetoric.

11 MS. FRIEDMAN: I understand that, your Honor. I do
12 have some substantive issues I think it would be helpful to get
13 a ruling on from the Court, if we could.

14 THE COURT: All right. Let's see whether we can.

15 MS. FRIEDMAN: Your Honor, the first ones are
16 paragraphs 13 through 16 which relate to the TexPet and
17 Republic of Ecuador business relationships, shall we say.

18 THE COURT: I looked at that before. I know just what
19 it relates to. I would assume this is something that either
20 has been or should be stipulated, or at least if there's any
21 error in it, that it will be corrected and stipulated, or that
22 it's something of which I can take judicial notice. God knows
23 it is all over -- I don't know -- an enormous number of
24 decisions both by me and Judge Sand and Judge Rakoff and the
25 Court of Appeals. There's no mystery about any of this.

DALLCHE4

1 MS. FRIEDMAN: This is the question, your Honor. I
2 have not gone through fact by fact what -- when we dealt with
3 this issue with Mr. Veiga at the beginning of the trial, I
4 think the Court said something along the lines of what you did
5 and struck those paragraphs so that we didn't have to ask
6 questions about it and we don't have to bring witnesses to
7 address.

8 As the Court is aware, the parties have different
9 opinions about lots of facts in this case, but I don't think
10 any of this is material to the decisions the Court is going to
11 be making and that's what I'm getting at. If it's material, we
12 get at it, but.

13 THE COURT: Look, the background of how it came to be
14 that Texaco was in Ecuador and in what way it was in Ecuador
15 and when it got out of Ecuador, it is kind of -- it's hard for
16 me to foresee that it affects the outcome, here but it is
17 certainly indisputably part of the context in which this all
18 takes place.

19 MS. FRIEDMAN: Let me put my cards on the table about
20 that, your Honor. There are a lot of issues that were
21 litigated below in terms of in this case in this -- not below,
22 I'm sorry.

23 THE COURT: I was going to say --

24 MS. FRIEDMAN: Down south.

25 THE COURT: -- there was nobody lower than me.

DAL8CHE5

1 MR. FRIEDMAN: Down south, your Honor, in Ecuador,
2 including the characterization of the relationships between the
3 parties TexPet, Ecuador, Chevron, etc. And so what I am trying
4 to develop is some clarity in my mind about what we are
5 actually fighting about here.

6 THE COURT: I don't think anybody is fighting about
7 this. I do frequently search for metaphors so I will abstain.

8 The fact of the matter is this is part of the relevant
9 history of the world. Now, is it likely to affect the question
10 of whether the Cabrera report was inappropriately written and
11 fed to Cabrera, as is claimed? Is it likely to affect any
12 determination on who did what to whom in relation to the
13 judgment? Obviously not. Is it part of the general background
14 that everybody had? Sure it is.

15 MR. FRIEDMAN: I will leave that alone, but I would
16 then like --

17 THE COURT: That's not to say, if there is an error
18 here, it shouldn't be cleaned up. I didn't notice one, but
19 that's not definitive. And there are ways to clean it up. I
20 don't think there are any issues.

21 MR. FRIEDMAN: Just one example, your Honor. At the
22 bottom of paragraph 16, I think we would take issue with the
23 \$500 million, but again, I can't imagine that would be relevant
24 or material to the Court's --

25 THE COURT: I think the last sentence of paragraph 16

DAL8CHE5

1 seems to be entirely unnecessary for any purpose whatsoever,
2 including background.

3 Mr. Mastro, any disagreement about that?

4 MR. MASTRO: We included it for background, but I
5 understand, your Honor.

6 THE COURT: So the last sentence of paragraph 16 is
7 stricken.

8 MR. FRIEDMAN: Getting to something that I think is
9 potentially more critical, in terms of how we go forward, I
10 would ask the Court to take a look at paragraph 35.

11 This issue, I am sure the Court has heard a lot about
12 it during the course of this litigation, about stopping
13 inspections of the lab, how each side accused the others of
14 having inappropriate lab procedures that was litigated
15 extensively in Ecuador. To be precise, I would ask that 35 be
16 stricken.

17 THE COURT: Mr. Mastro.

18 MR. MASTRO: This is a subject on which the witness
19 has personal knowledge, and we think it is relevant, your
20 Honor, because one of the ways in which Mr. Donziger is trying
21 to create a false narrative, and pressured the court and
22 bullied the court, was to prevent an inspection of this HAVOC
23 lab. He referred to it internally as it would be a disaster
24 for them. And that's the subject of the barging in ex parte in
25 the judge's chambers.

DAL8CHE5

1 THE COURT: I am not striking this, Mr. Friedman.

2 MR. MASTRO: Thank you, your Honor.

3 MR. FRIEDMAN: Your Honor, on a related point would be
4 paragraphs 39 through 42. This relates to the appropriateness
5 when the plaintiffs below dropped their request for judicial
6 inspections. Again, it's the same argument, if you will, but
7 in a broader context, both sides argued this extensively in
8 front of the Ecuadorian courts. We can repeat those arguments
9 again to this Court factually, if you want to hear both sides'
10 version of what happened there. So I am just looking for some
11 guidance.

12 THE COURT: Look, this seems to me, if not at the
13 heart of the case, it is certainly in a very significant part
14 of the circulatory system.

15 MR. FRIEDMAN: Thank you. I think once this is
16 clarified for us, we will be able to move faster in our case in
17 chief as well and be able to help Mr. Mastro in terms of what
18 witnesses we are calling.

19 THE COURT: My understanding, and Mr. Mastro will
20 correct me if I am wrong, is this. Did the plaintiffs in the
21 abstract have the right to say, we'd rather not do any more
22 judicial inspections?

23 I take it there is no issue that if that's what they
24 wanted to do, they had the right to do that, just like you have
25 the right, if you decide not to cross-examine this witness, to

DAL8CHE5

1 sit down. I wasn't suggesting that you should. I am just
2 saying you have that right. But that's not what they are
3 saying.

4 Right, Mr. Mastro?

5 MR. MASTRO: That's not what we are saying.

6 THE COURT: They are saying, as I understand them, and
7 I have been around this case for a while, for better or for
8 ill, and I am not asking for an opinion, that for whatever
9 reason they decided they didn't want him anymore, what they did
10 at least was to take advantage of the opportunity to pressure
11 or blackmail, or whatever word they would care to use, the
12 judge to let them, and then to substitute for the inspections a
13 single expert, whom they were happy with and who they could
14 control, and then ultimately did control. And you know the
15 rest of the story, as well as I do.

16 If that happened, that may well have been wrong. It's
17 at the heart of the case. Maybe not the absolute top of Mount
18 Everest, but it's up there.

19 I get your point, right, Mr. Mastro? I am not
20 misstating your position?

21 MR. MASTRO: Not at all.

22 MR. FRIEDMAN: Paragraph 70, as best I can tell, is
23 all just hearsay statements that I would ask to be stricken.

24 THE COURT: Yes, Mr. Mastro. I can't understand why
25 this is still in here.

DAL8CHE5

1 MR. MASTRO: Your Honor, it is, from the witness's
2 point of view, his state of mind about Judge Zambrano and what
3 Judge Zambrano's reputation was, but I understand the Court.

4 THE COURT: His state of mind about Judge Zambrano
5 isn't relevant. Paragraph 70 is stricken.

6 Anything else, Mr. Friedman?

7 MR. FRIEDMAN: I am nearing the end, your Honor.

8 79, I don't want to be pejorative, but it's
9 essentially this witness's characterization of what happened in
10 the appellate court, which I think this Court has said the
11 record is the record. I don't want to have to argue with him
12 about what the record says. But if you believe there is
13 something here that is material, again, I will address it.

14 THE COURT: Mr. Mastro, what about it?

15 MR. MASTRO: Actually, your Honor, they very much now
16 put this at issue what happened in the appellate proceedings,
17 and this is this witness's knowledge of what happened in the
18 appellate proceedings and his perception of how they were
19 distorted. They are basically trying to make an argument that
20 the appellate proceedings somehow cured certain things about
21 fraud in the judgment, and this witness is here to testify from
22 his own personal knowledge and experience how he saw the
23 appellate process playing out in ways that created a
24 distortion. So that's why it's in here.

25 THE COURT: I know why it's in here.

DAL8CHE5

1 There is a record in this proceeding, right?

2 MR. MASTRO: There is, your Honor.

3 THE COURT: And is there a single fact as opposed to a
4 characterization or a supposition that's in this paragraph that
5 isn't there?

6 MR. MASTRO: Your Honor, what the witness testifies
7 about in this regard is that he saw the appellate process and
8 the motion practice there as an attempt to manipulate the
9 appellate record to address the problems that the plaintiffs
10 had. So I thought that his personal knowledge might be --

11 THE COURT: It's not personal knowledge. It's his
12 personal opinion, as the advocate for you, your client.

13 MR. MASTRO: I understand.

14 THE COURT: Is there a fact?

15 MR. MASTRO: It's his interpretation of the record.

16 THE COURT: 79 is out.

17 MR. FRIEDMAN: We make the same point for 80 and 81.

18 THE COURT: It's out, I should say, on the assumption
19 that you're going to offer the record. There are facts that
20 are not characterizations that he is competent to testify to in
21 79, such as the first sentence. But I take it the record is
22 going to be before me, is that correct, Mr. Mastro?

23 MR. MASTRO: Your Honor, I believe we will be offering
24 the relevant pieces of the record, particularly in light of the
25 position they are taking in the case.

DAL8CHE5

1 THE COURT: OK. So you can argue whatever you want to
2 argue from the record and I will either conclude that when the
3 appellate court issued its decision on January 13 it was a
4 ignoring a prior pleading, or I will conclude it's immaterial,
5 or I will conclude they weren't ignoring it, if it matters. I
6 don't know if it matters.

7 Now, as to paragraph 80, same question. Is there a
8 record and is there anything in this paragraph of which the
9 witness has personal knowledge that isn't in that record?

10 And I am sure there will be the same question as to 81
11 and 82 and 83.

12 MR. MASTRO: Your Honor, it was offered for the same
13 reason, that he was explaining what happened procedurally and
14 his understanding what happened procedurally.

15 THE COURT: Is there anything in 80 through 83 of
16 which the witness has personal knowledge that isn't proved by
17 the record from the court proceeding which someone is going to
18 offer in this case?

19 MR. MASTRO: Your Honor, the arguments that are made
20 are his authentication from personal knowledge of the BIT
21 tribunal order, that is PX 444, that is in paragraph 81, and
22 the familial relationship in paragraph 83 of the presiding
23 judge of the panel to a member of the National Assembly from
24 the governing political party.

25 THE COURT: I take it there is no dispute, Mr.

DAL8CHE5

1 Friedman, that Plaintiff's 444 is what Mr. Callejas says it is,
2 is that right?

3 MR. FRIEDMAN: Yes. But we have objection to the BIT
4 tribunal.

5 THE COURT: That's another matter.

6 MR. FRIEDMAN: No. There is no objection that it is
7 what it purports to be.

8 THE COURT: So that takes care of that.

9 Is there any dispute about the last sentence of
10 paragraph 83? And if there is, we will see.

11 MR. FRIEDMAN: I don't know the answer to that.
12 Whether you leave this in or not, I am not going to question
13 him about that.

14 THE COURT: Frankly, I don't know what difference it
15 makes, Mr. Mastro.

16 MR. MASTRO: I understand, your Honor. I think the
17 witness would make a further connection.

18 THE COURT: I will tell you what. On redirect I will
19 allow you, if he has personal knowledge, to go into that.

20 Subject to that caveat, 80 to 83 are stricken. This
21 is part of what I hoped was going to be coming out from these
22 statements.

23 What else?

24 MR. FRIEDMAN: 87 to 88.

25 THE COURT: Is there any dispute about the facts in

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1 paragraph 87?

2 MR. FRIEDMAN: That would be a relevance objection,
3 your Honor.

4 THE COURT: Putting aside relevance, is there any
5 dispute about the facts?

6 MR. FRIEDMAN: Can I have just a second, your Honor?
7 There is a dispute as to -- I am at the top of page
8 33 -- the former concession area, as well as those related to
9 the former consortium that remained Petroecuador's
10 responsibility after the settlement.

11 THE COURT: I don't understand what you just said.

12 MR. FRIEDMAN: What is being stated there is there is
13 an assumption in that sentence that those things remained
14 Petroecuador's responsibility, which there is a dispute about.

15 THE COURT: I will leave the first part of 87 in and
16 strike the portion that begins on page 33 with the words "which
17 included" through the end of the paragraph.

18 MR. FRIEDMAN: Thank you.

19 88, your Honor.

20 THE COURT: The third and fourth sentence is stricken
21 along with the words "not surprisingly" from the fifth
22 sentence.

23 Anything else?

24 MR. FRIEDMAN: 90 to 94 are the things I think you
25 have already ruled on. I can't remember what day it was. When

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1 Mr. Veiga was testifying about the sham or bogus criminal
2 charges. I think there was a stipulation or an agreement that
3 that would be out of the case.

4 THE COURT: Mr. Mastro, what about this?

5 MR. MASTRO: Your Honor, I stipulated that the merits
6 of the criminal charges were not part of the case and were not
7 a predicate act of Chevron's. I explained to the Court that
8 the evidence there of collusion with the Republic of Ecuador,
9 ulterior motives to pressure Chevron into settling, of other
10 ulterior motives including to try and undermine --

11 THE COURT: Isn't almost the entirety of these
12 paragraphs material as to which this witness is making a
13 lawyer's argument rather than stating matters on personal
14 knowledge, isn't that true?

15 MR. MASTRO: Actually, your Honor, he observed and
16 himself lived in fear the persecution of two other Chevron
17 lawyers with whom he litigated side by side for years. That's
18 what he is describing, the real effects of that political
19 pressure. Of course, it's also ultimately those charges, being
20 able to make them go away if Chevron ever relented on
21 settlement.

22 THE COURT: He is going to talk about personal
23 knowledge about that?

24 MR. MASTRO: He is not. But he is going to speak of
25 personal knowledge as to how the pendency of those charges

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1 caused real pressure and fear for himself and these other
2 Chevron lawyers.

3 MR. FRIEDMAN: Your Honor, I think it was 10/17. I
4 think you ruled that this issue was out of the case for both
5 sides. Mr. Mastro tried to make the merits distinction, but
6 you --

7 THE COURT: What page?

8 MR. FRIEDMAN: We don't have a transcript, your Honor.
9 I apologize. We don't order those. But it was on 10/17. I
10 was cross-examining Mr. Veiga, and we got to this point and I
11 was trying to point out that the charges were not sham, that
12 there was substantive merit to them, and that's when we got
13 sidetracked.

14 MR. MASTRO: I do remember the exchange very well.

15 THE COURT: You say it was on the 17th?

16 MR. FRIEDMAN: It was. I don't know if you have a
17 word search capability, but if you search for bogus it will
18 come up.

19 THE COURT: The word was not used on October 17.

20 MR. FRIEDMAN: It must be the 16th.

21 MR. MASTRO: Mr. Veiga testified earlier, your Honor.

22 THE COURT: He was on the first day?

23 MR. FRIEDMAN: Second.

24 MR. MASTRO: On page 209, I made very clear -- your
25 Honor asked me -- we are not alleging the merits of the

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1 criminal charge. That's on page 209, lines 16 through 19 on
2 the 16th.

3 I went on at other points to explain that we thought
4 the evidence was still relevant, in terms of the pressure
5 campaign that was ultimately perpetrated.

6 THE COURT: I have reviewed the transcript. Mr.
7 Mastro's recollection of my ruling is accurate.

8 MR. FRIEDMAN: Your Honor, I apologize. I don't have
9 it here. I think it went on for several pages, and I started
10 asking more questions, and ultimately the Court ordered us to
11 move on and not ask Mr. Veiga questions about the charges
12 because they were out of the case for both sides.

13 MR. MASTRO: The merits of the charges.

14 THE COURT: Look, I have very quickly skimmed about 20
15 pages after the ruling, and I don't see it, Mr. Friedman. If I
16 am mistaken, I am sure someone will call it to my attention,
17 and I will take another look at it this evening.

18 We have got an abundance of evidence about the
19 criminal charges, as I recall.

20 Then we have in paragraph number 91, the witness
21 purporting to testify as to the toll that all of this took on
22 other people. No personal knowledge.

23 He purports to testify about why Dr. Perez relocated
24 to the United States. No personal knowledge.

25 Now, if Dr. Perez told him why he relocated, and

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1 Dr. Perez's view was pertinent to his state of mind and his
2 state of mind is relevant, that would be one thing, but I'm not
3 sure I see that. Maybe Mr. Mastro will correct me when I get
4 through with this. And I gather there were some conversations.

5 Then he goes on about Dr. Perez dying three weeks
6 after he returned to Ecuador. So what? I mean, I don't
7 minimize anybody's death, obviously. When I say "so what," I
8 am saying, what has it got to do with this case? And the
9 witness's own personal state of mind about what he perceived to
10 be a threat against him of similar prosecution, I don't see how
11 it advances the ball, Mr. Mastro, I don't.

12 MR. MASTRO: Your Honor, I don't want to belabor the
13 point. The witness wanted to explain from his personal
14 knowledge and personal observation why this pressure campaign
15 caused such fear.

16 THE COURT: There is a difference between evidence
17 that is relevant and material in deciding the lawsuit in front
18 of me and things that people, who feel deeply about this whole
19 thing, like Mr. Callejas and Mr. Donziger, would like to say.

20 MR. MASTRO: I understand, your Honor. We can go on,
21 your Honor.

22 THE COURT: Let's move on.

23 MR. FRIEDMAN: Here is the problem and it's the same
24 one we ran into with Mr. Veiga. The title is sham criminal
25 charges and the first --

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1 THE COURT: I already ruled on it. Could we please
2 move on?

3 MR. FRIEDMAN: I didn't understand what your ruling
4 was.

5 THE COURT: Mr. Mastro will lend you his transcript at
6 page 209 and feel free in the break which I am going to call
7 right now to look at it again.

8 (Recess)

9 THE COURT: Did anybody find anything?

10 MR. FRIEDMAN: I did, your Honor.

11 THE COURT: Please bring it to my attention.

12 MR. FRIEDMAN: Your Honor, if you go to page 209, what
13 happened was I had started to question Mr. Veiga, and the issue
14 came up about what was alleged in the complaint. So we took a
15 break and discovered that, in fact, the allegations of sham
16 criminal charges were in the complaint in various places.

17 I think at line 10 of 209, after going through that
18 with the Court, I asked for permission to question Mr. Veiga
19 about the bogusness or shamness of the charges. And at line 13
20 the Court denied that, saying this issue is out of the case for
21 both sides.

22 THE COURT: That's what I think I said earlier.

23 MR. FRIEDMAN: Then 90 through 94 would be out.

24 THE COURT: I have already ruled on that before the
25 break.

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1 MR. FRIEDMAN: I'm sorry. I misunderstood.

2 THE COURT: OK. So this is a nonjury case and it
3 might be helpful to both sides to give you a most tentative
4 view of this, because nobody has really addressed this,
5 especially in light of the exchange to which counsel has just
6 referred.

7 When this all began, Chevron was certainly alleging
8 that the attempt to revive the criminal charges was wrongful
9 because the charges were bogus. I understood the complaint was
10 certainly broad enough to include it, and I think maybe they
11 specifically argued, and I think it may have come up in the
12 exchange the other day, and certainly today, that although they
13 have now said we are not going to litigate the question of
14 whether they were bogus, that is to say whether there was any
15 substantial basis for them, they are still taking the position
16 that, in one degree or another, the fact that an attempt was
17 made to revive the charges, and the means by which it was done,
18 if it occurred, is still relevant to the case, relevant to the
19 extortion charge, and maybe in other respects. I don't know
20 fully.

21 Now, the analogy that comes to my mind, because I am a
22 super antitrust lawyer from another era, relates to the
23 Noerr-Pennington doctrine in antitrust law. And that is that,
24 speaking very loosely, the Supreme Court held in those cases
25 that lawsuits by one competitor against another, or other

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1 efforts to invoke governmental authority, for anti-competitive
2 reasons with an anti-competitive effect, are typically not
3 actionable because they are protected, in this country anyway,
4 by the First Amendment.

5 There has developed something, and it's a long time
6 ago that it developed, and it has grown, something called the
7 sham exception, which has various manifestations, which are
8 exceptions to the general rule that the First Amendment
9 precludes antitrust liability for suing people and invoking
10 governmental action in other ways. One, as I remember it, is
11 that the lawsuit or whatever it was was a sham. There was no
12 objective basis for thinking it had any merit, and it was
13 brought anyway and it was brought for an anti-competitive
14 purpose or with an anti-competitive effect or both.

15 A second exception to the principle may exist where
16 the party seeking to invoke governmental action does it without
17 regard to whether there is any merit to it and for the purpose
18 of injuring a market rival. And the fact that some lawsuits or
19 attempts to invoke governmental action, in those circumstances,
20 may turn out to have some merit may be beside the point on
21 those facts. I don't purport to say the Supreme Court has said
22 all of this, I'm not sure, but there is a line of cases that
23 says that.

24 There is a third line of cases that says the
25 Noerr-Pennington doctrine, at least in some circumstances, does

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1 not protect somebody who seeks to invoke governmental action
2 through intentional misrepresentations and maybe other
3 misconduct.

4 Now, in light of all of that, and in light of the fact
5 that nobody has addressed in any serious way where we are,
6 given Chevron's position with respect to the sham allegation, I
7 am not saying today. To whatever extent you folks want to help
8 me out on that should it arise again, that would be welcome.

9 What I have said is that for this witness, based on
10 the witness statement, he has nothing to say on personal
11 knowledge that's relevant to this on any theory so we are just
12 going to go ahead with his testimony. And if this arises later
13 in the case, we will deal with it then, and we will all be in a
14 position to address it in a better informed way.

15 MR. FRIEDMAN: Thank you. That's very helpful, your
16 Honor. And while it may not seem like it, I think we are
17 saving lots of time here.

18 THE COURT: From your lips to God's ears.

19 MR. DONZIGER: Before we conclude this, can I say one
20 quick thing?

21 THE COURT: I'm sorry. The rule in my courtroom is
22 the first lawyer who stands up on a witness is the lawyer on
23 that witness. And that's Mr. Friedman.

24 MR. DONZIGER: It's just a legal argument.

25 THE COURT: It's under the rule.

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1 MR. DONZIGER: So I can't speak?

2 THE COURT: Not now. You talk to Mr. Friedman, and I
3 am sure he will bring to my attention whatever he needs to
4 bring to my attention.

5 MR. FRIEDMAN: Could I have just a second?

6 If I could then ask that we take a look at 95 through
7 103, which largely is Mr. Callejas's kind of characterization
8 of the media war that went on down in the Ecuador.

9 THE COURT: I am not going to address that now. You
10 object if you want to object through the mechanism we set up.
11 Let's just get on with the testimony. We can sit here and
12 debate every sentence in every one of these statements for
13 three days and the trial will go on into the year after next.

14 Do you have any questions for the witness?

15 MR. FRIEDMAN: I do, your Honor. Give me just a
16 second.

17 THE COURT: I have to break promptly today because I
18 have another case.

19 MR. FRIEDMAN: At 4:30, your Honor?

20 THE COURT: Yes.

21 CROSS-EXAMINATION

22 BY MR. FRIEDMAN:

23 Q. Mr. Callejas, my name is Rick Friedman. I represent Mr.
24 Donziger in this case.

25 I wonder if I could ask you about ex parte contacts in

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Callejas - cross

1 the litigation in Ecuador.

2 In fact, did Chevron attorneys have ex parte contacts
3 with judges in Ecuador?

4 A. We never had a nonauthorized contact with the judges
5 hearing the case in Ecuador, nor to discuss substantive issues
6 related to our defense, nor the merits of the case, nor the
7 presence, nor the knowledge by the attorneys for the other
8 side.

9 THE COURT: I didn't quite understand the answer.
10 What did you mean to convey when you referred to the attorneys
11 for the other side, sir?

12 THE WITNESS: When I referred to the attorneys for the
13 other side, I referred to the attorneys for the plaintiffs in
14 the trial known as *Maria Aquinda, et al. v. Chevron*, which took
15 place in the Provincial Court of Justice in Sucumbios in
16 Ecuador.

17 Q. You had referred to nonauthorized contacts. What is an
18 authorized ex parte contact?

19 A. The characterization that I made of nonauthorized refers to
20 it being something improper because it violates rules of
21 procedure and also because it would violate legal rules.

22 MR. FRIEDMAN: I would like to approach the witness,
23 your Honor, with DX 1350.

24 THE COURT: You're not going to follow up on this?

25 MR. FRIEDMAN: I am going to come at it differently,

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Callejas - cross

1 if that's OK.

2 I am having a little trouble hearing the interpreter.
3 Is it possible to have a mike for him or ask him, I guess, to
4 speak up a little.

5 Q. Mr. Callejas, did you help draft interrogatory number 10
6 response here that we have made, Exhibit DX 1350?

7 A. No, I did not.

8 MR. FRIEDMAN: Your Honor, nevertheless, I would move
9 DX 1350 in as sort of Chevron's response to ex parte contacts.

10 THE COURT: Any objection?

11 MR. MASTRO: No objection, your Honor.

12 THE COURT: The response to interrogatory number 10 in
13 DX 1350 is received.

14 (Defendants' Exhibit 1350, response to interrogatory
15 number 10, received in evidence)

16 Q. Mr. Callejas, did Chevron lawyers, during the course of the
17 Lago Agrio litigation, have ex parte contacts with judges, that
18 is contacts in which the plaintiff lawyers were not present?

19 MR. MASTRO: Objection. Asked and answered.

20 THE COURT: The answer was very hard to understand
21 because there the word "nor" appeared every other phrase.
22 Overruled.

23 A. Based on the definition I have already provided of the ex
24 parte contacts that you're referring to, meaning inappropriate
25 contacts with judges who are hearing the case, during which the

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Callejas - cross

1 aim is to influence in a nonauthorized way his hearing of the
2 case, or the way in which the merits of the case will be ruled,
3 without the other party being notified, nor the other party
4 being present, I repeat that we have never had those kinds of
5 contacts with the judges hearing the case in Lago Agrio.

6 Q. When is it proper for an attorney -- well, let me start
7 over.

8 Did the law regarding ex parte contacts in Ecuador
9 change in 2009?

10 MR. MASTRO: Objection. It calls for a legal
11 conclusion.

12 THE COURT: Well, he is a lawyer.

13 THE WITNESS: Excuse me. Does it mean that I should
14 answer?

15 THE COURT: Yes.

16 A. Can you please repeat the question? I got lost.

17 Q. Did the law regarding the propriety of ex parte contacts in
18 Ecuador change in 2009?

19 A. In 2009 the new organic code, the judicial function was
20 issued. It included a rule that prohibited judges from having
21 unilateral contacts with parties in the trial. However, since
22 I was in law school, since then there were already rules that
23 regulated those kinds of activities. Indeed, the law stated
24 that the judges should act with total independence from the
25 parties. They should be objective and impartial. Rules that

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Callejas - cross

1 obviously imposed on them the provision of having these kinds
2 of contacts even before March of 2009.

3 THE COURT: I'm sorry. Was the word the provision of
4 having these kinds of contacts or the prohibition of having
5 these kinds of contacts?

6 THE INTERPRETER: The prohibition.

7 THE COURT: Thank you, Mr. Interpreter.

8 MR. FRIEDMAN: Did you say prohibition?

9 THE INTERPRETER: Prohibition.

10 Q. Before 2009, in the Lago Agrio litigation, did both sides
11 have ex parte contact with the judges?

12 MR. MASTRO: Objection to form.

13 THE COURT: Sustained as to form and it's compound.

14 It will be very helpful if you would have in mind the
15 definition the witness gave you to begin with, because without
16 that, this is going to be extremely confusing and unhelpful.

17 MR. FRIEDMAN: I will just go to a document, DX 626.

18 The copy I have for the Court is not marked. I
19 apologize. It's 626.

20 Q. Mr. Callejas, I am not sure whether it's better that you
21 and I work off of an English version or a Spanish version.
22 Which would be easier for you?

23 A. It would be easier for me to work from the Spanish copy,
24 but I would like to read it briefly, if you and your Honor
25 allow me to, because I don't recall the contents.

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Callejas - cross

1 Q. The Spanish begins on page 4 of this exhibit.

2 Let me know when you're ready for me to ask you a
3 question about it.

4 (Pause)

5 A. I'm ready, counsel.

6 Q. Can you tell us, first of all, what this document is?

7 A. This document, from the characteristics that I see in the
8 Spanish copy here, is a filing presented on my behalf by the
9 attorney Diego Larrea Alarcon.

10 Q. Is he an attorney in your law firm?

11 A. Yes. He is an attorney that works with me on the Chevron
12 case in the Lago Agrio trial.

13 Q. If we look at the fourth paragraph in this document, can
14 you tell us what request is being referenced here?

15 A. The fourth paragraph refers to the possible existence of a
16 request made by the plaintiff party, and we were writing
17 because we wished to confirm its existence.

18 Q. The request related to judicial inspections, is that
19 correct?

20 A. In theory, that was what the request concerned that we
21 wanted to confirm, whether it existed or not, in the Lago Agrio
22 case.

23 Q. If we go to the fifth paragraph, does it indicate that one
24 of the lawyers for Chevron went to see the judge with regard to
25 that request?

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Callejas - cross

1 MR. MASTRO: Objection to form and the document speaks
2 for itself.

3 THE COURT: I will regard that as a predicate to a
4 question.

5 What is the next question?

6 Q. Mr. Callejas, did one of your lawyers go to see this judge
7 about judicial inspections on an ex parte basis?

8 MR. MASTRO: Objection to form, your Honor.
9 Definition of ex parte.

10 THE COURT: Rephrase it in terms of whether he went
11 without notice to the other side being present.

12 Q. Did one of the lawyers for Chevron -- let me start over.

13 Does this document reflect that one of the lawyers for
14 Chevron went to see the judge without prior notice to the
15 plaintiffs?

16 A. This document reflects that one of the Chevron lawyers, in
17 effect, met with, visited the judge on the case to address
18 matters that were eminently of a logistical and scheduling
19 nature as to the judicial inspections, not to address
20 substantive or merit issues in the case.

21 If you are referring to that part of paragraph 5, I
22 would ask that you also refer to the previous part of paragraph
23 5, which I would permit myself to read in the Spanish original
24 to have the interpreter translate.

25 "After learning that the active party had maintained a

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Callejas - cross

1 dialogue with you with regards to this request." This confirms
2 in my mind what I said in my earlier declaration that both our
3 meeting and a possible meeting by the plaintiffs with the court
4 were merely for logistical matters and scheduling, and were not
5 ex parte meetings to address substantive matters at the heart
6 of the case or the litigation.

7 Q. Am I understanding you correctly then that you do not think
8 that there was anything improper in the plaintiffs' contact
9 with the judge either?

10 MR. MASTRO: Objection. It misstates his prior
11 testimony. It calls for his opinion. It calls for a legal
12 conclusion.

13 THE COURT: Is your question limited to this occasion?

14 MR. FRIEDMAN: This occasion.

15 THE COURT: Overruled.

16 A. Could you ask the question again?

17 Q. Yes. Is it your view that on this occasion there was
18 nothing improper in the plaintiffs' contact with the judge?

19 A. If that meeting only concerned logistical aspects of the
20 judicial inspections, there was nothing improper about that
21 meeting.

22 Q. Do you know Diego Borja?

23 A. I know two persons in Ecuador whose name is Diego Borja. I
24 don't know which one you are referring to.

25 Q. Do you know a Diego Borja who was involved in the incident

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Callejas - cross

1 with Judge Nunez?

2 A. Yes, I know him.

3 Q. That's the Diego Borja I would like to ask you about.

4 A. OK. Perfect.

5 Q. Can you tell us when you first met him?

6 A. I can't be sure when I met him for the first time, probably
7 the year 2005 or 2006, most likely.

8 Q. We don't need to know the exact date, but can you tell us
9 the context in which you met him?

10 A. I met him during the course of a judicial inspection when
11 he was presented to me as an employee of the lab that was doing
12 work related to the handling of samples from that judicial
13 inspection.

14 Q. Which lab was he represented to be an employee of?

15 A. I don't remember the name of the lab, but it was a lab that
16 was duly accredited in Ecuador to do an analysis of samples.

17 Q. Whatever the name of the lab, it was handling samples for
18 Chevron, is that correct?

19 A. That lab was going to do certain analyses that the experts
20 proposed by Chevron had ordered.

21 Q. Was the name of that lab Severn-Trent?

22 A. It could be. I don't know.

23 Q. How often would you see Mr. Borja at judicial inspections?

24 A. Not very frequently since the work of sampling was done by
25 the experts after lawyers and the court had concluded that

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Callejas - cross

1 judicial inspection. And, therefore, Diego Borja's presence at
2 the inspection site to handle the samples from there to the
3 city of Lago Agrio, and thereafter to the city of Quito, would
4 have occurred after my presence at the inspection.

5 Q. Other than encountering Mr. Borja at judicial inspections,
6 have you had any other contact with him?

7 A. I can affirm to you under the oath that I have taken that
8 Diego Borja was never in my office, nor was I ever in Diego
9 Borja's office, nor have I ever spoken to him by phone.

10 However, on one occasion I did speak to him in regards to
11 videos that you have presented about Judge Nunez Zanabria's
12 participation.

13 Q. Is Mr. Borja's office -- I will start over.

14 In 2008, 2009, was Mr. Borja's office in the same
15 building as your office?

16 MR. MASTRO: Objection. Compound.

17 THE COURT: Overruled.

18 A. I don't remember the dates, but for some time Diego Borja's
19 office and the laboratory for which he worked was in the same
20 building in which my offices are located.

21 Q. And you said that you did have one other conversation with
22 him in person with regard to the incident with Judge Nunoz, is
23 that correct?

24 THE COURT: I think you misspoke. I think the name is
25 Nunez.

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Callejas - cross

1 A. What was the question? I'm sorry.

2 Q. Is it your testimony that other than at the judicial
3 inspections, you have only spoken to Mr. Borja one other time?

4 A. My testimony is that, in effect, only that other time,
5 other than for occasionally greeting each other in the
6 elevators or in the parking lot of the building where we both
7 had our offices.

8 MR. FRIEDMAN: Your Honor, would this be a good time
9 to break?

10 THE COURT: Yes.

11 Before we leave, Mr. Friedman, give me an idea of how
12 long you expect to be with the witness tomorrow?

13 MR. FRIEDMAN: I would say an hour.

14 THE COURT: Then what is coming up tomorrow?

15 MR. GOMEZ: I would have at least an hour with the
16 witness, your Honor, at least. Given the translation, it's
17 hard to tell.

18 THE COURT: Thank you.

19 MR. MASTRO: After this witness, your Honor, there are
20 some scheduling issues so it would either be Mr. Dahlberg or
21 Mr. Guerra. We are hoping to do Mr. Dahlberg first.

22 THE COURT: All right.

23 MR. MASTRO: How long do you expect with Mr. Dahlberg?

24 MR. FRIEDMAN: Half an hour.

25 THE COURT: Mr. Gomez, how about you?

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1 MR. GOMEZ: Not very long. Just a few questions, if
2 any.

3 MR. MASTRO: So we expect Mr. Dahlberg and then
4 Mr. Guerra.

5 MR. FRIEDMAN: I neglected to move DX 626 into
6 evidence.

7 THE COURT: Is there any objection?

8 MR. MASTRO: I am not sure why his prior affidavit
9 would come into evidence, but we have no objection to it.

10 THE COURT: All right. DX 626, right?

11 MR. FRIEDMAN: It's the pleading.

12 THE COURT: It's a pleading from the Lago Agrio case.

13 (Defendant's Exhibit 626 received in evidence)

14 (Adjourned to October 22, 2013, at 9:30 a.m.)
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| 478 and 1307 | .555 |
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| 1 | 1335 | | .566 |
| 2 | 1332 | | .651 |
| 3 | 1350, | response to interrogatory number 102 | |
| 4 | 626 | | .701 |
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